1991

Utah State Department of Health v. William D. Peterson and PEMCO : Reply Brief

Utah Supreme Court

William D. Peterson; Pro Se Appellant.
R. Paul Van Dam; Utah Attorney General; Brent A. Burnett; Assistant Attorney General; Denise Chancellor; Assistant Attorney General; Richard K. Rathburn; Assistant Attorney General; Attorneys for Plaintiff.

IN THE SUPREME COURT IN AND FOR THE STATE OF UTAH

Utah State Department of Health)
)
Plaintiffs-Respondent,)
-vs-) Supreme Court No. [redacted]
)
William D. Peterson & PEMCO)
) 91-0422-CA
Defendants-Appellant.)

REPLY BRIEF/ANSWER
of Appellant (Defendant)
Addendum Complaint and Motion

On Appeal from the Third Judicial District
Court of Salt Lake County, State of Utah
The Honorable David S. Young, Judge
Civil No. 900901098

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WDP file
Y-ReplyB

July 12, 1991

Ref Supreme Court No. 910079,
from Civil No. 900905733PR Judge Brian

BRIEF ON APPEAL, per letter from Supreme Court Clerk, December 3, 1990. Rules 24, 26, and 27 are referenced.

IN THE SUPREME COURT IN AND FOR THE STATE OF UTAH

Utah State Department of Health Plaintiffs-Respondent, -vs- William D. Peterson & PEMCO Defendants-Appellant.	)	Supreme Court No. 900498

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ARGUMENT

I. THERE ARE JUSTICIABLE ISSUES REMAINING IN THE DEFENDANTS' COUNTER-COMPLAINT AGAINST THE STATE AND, THE STATE FRAUDULENTLY DECEIVED THE COURT PURPORTING A LIE (78-51-31), THE COURT'S DISMISSAL OF THE MATTER IS BASED UPON A FALSE REPRESENTATION MADE BY THE ATTORNEY FOR THE PLAINTIFF. THE SUPREME COURT MUST REVIEW THE ACTION OF THE PLAINTIFF'S ATTORNEY AND RULING OF THE COURT IN VIEW OF CORRECT INFORMATION. FURTHERMORE, THE ISSUE IS NOT WHETHER PETERSON SHOULD BE RESPONSIBLE FOR STORAGE OF SAID EQUIPMENT, THE ISSUE IS THAT THE DEFENDANT SHOULD BE PAID FOR THE GOVERNMENTS'S USAGE OF SAID EQUIPMENT.

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1.0 JURISDICTION - The Utah Supreme Court has appellant jurisdiction over this matter pursuant to Utah Code Ann. 78-2-3, (1) and (3)(c) and (3)(i), (1990 Supp.). Ref DOCKETING STATEMENTs of June 4, 1990 and Dec 5, 1990.

2.0 BACKGROUND

2.1 Defendant Peterson and Pemco contracted to furnish technology and equipment to move the Vitro tailings to Clive Utah.

2.2 The work was a government project of the Utah State Department of Health.

2.3 The project used defendants' technology and equipment for some three years during the period of the project without payment to defendants for their furnished properties.

2.4 Costs to the defendants for the usage of their properties not paid for as contracted has escalated from $1/4 million to $16.22 million which is owing to defendants.

2.5 In the spring of 1990, defendant Peterson traveled to Clive to check on some of his equipment there at the project site and found it missing. State workers there did not know of its whereabouts.

2.6 Defendant Peterson contacted Project Mgr. Mark Day who also did not know of its whereabouts.

2.7 Defendant Peterson expressed concern of its value, and that others would move it from the project without his permission.

2.8 Mark Day knew that Peterson was in financial difficulty because of not being paid for his work, and that Peterson did not have monies and ability to continue with the project's demobilization.

2.9 Mark Day later told Peterson the location of his equipment, and that the State had put Peterson's equipment into storage.

2.10 "On May 16, 1989, Larry F. Anderson, Director, Utah Bureau of Radiation Control, wrote to Mr. Peterson and PEMCO to remove the equipment within 15 days from the storage lot at 154 East Gordon Lane, Murray, Utah."

2.11 "On May 23, 1989, Mr. Peterson responded to Mr. Anderson's letter saying that he did not have a place to store the equipment." Peterson also complained of not being paid for its usage.

2.12 "On June 5, 1989, Mr. Anderson again wrote Mr. Peterson and PEMCO to remove the equipment by June 23, 1989."

2.14 "On August 4, 1989, Mr. Anderson wrote to Mr. Peterson and PEMCO saying that failure to take possession of the equipment was tantamount to abandoning the equipment, and that the State intended to sell the equipment as surplus property to help defray its moving and storage costs." see AFFIDAVIT of Mark Day, items 10-13

2.15 With each demand from the STATE the defendant wrote back demanding payment for its usage.

2.16 On January 26, 1990, Peterson filed a complaint in the Third District Court (Civil No. 900900523, Judge Russon/Stirba) complaining of not being paid and of the State's fraudulent payment bond. Peterson had notified the State that their bond was defective in July of 1985. William D. Peterson was the plaintiff, The State of Utah, Mark S. Day, Fred Nelson, Kenneth L. Alkema, and Peterson Van Alstein were the defendants.

3.0 NATURE OF PROCEEDING IN TRIAL COURT

3.1 On February 23, 1990 UTAH STATE DEPARTMENT OF HEALTH (plaintiff) brought suit against WILLIAM D. PETERSON AND PEMCO (defendant) to have defendant move his equipment from the private property leased by Tom Wolff. (Civil No. 900901098, Judge Young)

3.2 Interestingly, the STATE complained, for the moving of private (equipment) property, from private property, for which neither equipment or property the State had any rights or arrangement. (Ref Article IV, Constitution of the United States)

3.3 In bringing suite against the defendant, the plaintiff essentially brought suit against the defendant to continue work on the project in the form of demobilization.

3.4 The State's statement in their BRIEF OF APPELLEE that they filed a

> "declaratory judgment action against Mr. Peterson and his company, PEMCO, to determine whether equipment, which was being stored at the State's expense, should be considered abandoned"

is misleading.

The State knew that Peterson or PEMCO owned the

equipment, and knew that he was in hardship from not being paid, and that he had a demand upon the State for payment for their having a fraudulent payment bonding, monies rightfully owing to Peterson. The State had no rights to Peterson's properties per Articles IV, V, and VII of the Constitution of the United States.

3.5 The defendant answered and counter-claimed for payment per entitlement including:

a) Article IV of the Constitution of The United States, rights to be secure against unreasonable seizures.

b) Article V of the Constitution of The United States, shall not be deprived of property without due process.

c) Article VII of the constitution of The United States. Rights of trial and judgment by jury are preserved.

d) Bonding Law Title 14, chapter 1, sections 7 and 15 Liability of State for failure to obtain payment bond.

e) Bonding Law Title 63, chapter 56, Sec. 38 Bonds necessary when contract is awarded.

3.6 Contrary to the BRIEF OF APPELLEE, Peterson's complaint in the case before Russon/Stirba is not the same as the counterclaims in this matter.

3.7 The counterclaims in this matter were made before Judge Russon; but, Judge Russon disallowed the whole of them.

3.8 The State's statements and writing in this matter saying that the defendant's counterclaim is duplicative of the complaint filed by Mr. Peterson is misleading the Judges of these courts because the State failed to

say that this duplicative complaint has already been rejected, (not allowed into the Russon Court). Judge Russon would allow only a much simplified complaint.

3.9 For the plaintiff to say that the defendant can pursue his counterclaim in the Judge Russon/Stirba Court is a fraudulent lie by the State in that they know Judge Russon has already disallowed the "duplicative complaint".

3.10 Defendant Peterson thus MOTIONS that the State's order motion and thus its resulting ruling ORDER OF DISMISSAL and the State's statements in their BRIEF OF APPELLEE are misleading to the Courts wherein they say that Peterson's counterclaim is duplicative of the complaint "NOW PENDING" in the Judge Russon/Stirba matter. The State knows full well that the duplicative complaint was disallowed by Judge Russon and not allowed in because of the Judge's restriction of its length.

3.11 Peterson thus charges that the State has unlawfully deceived Judge Young in obtaining his dismissal, and also the Judges of the Supreme Court in this matter per Rule 78-51-31 and by so doing defendant Peterson is entitled to treble damages ($48.6M) and so motions:

> 78-51-31 DECEIT AND COLLUSION An attorney and counselor who is guilty of deceit or collusion, or who consents thereto with intent to deceive a court or judge or a party to any action or proceeding is liable to be disbarred, and shall forfeit to the injured party treble damages to be

recovered in a civil action.

See State's BRIEF OF APPELLEE, ARGUMENT II - page i and 6 wherein he says "DUPLICATIVE OF THE COMPLAINT NOW PENDING BEFORE THE THIRD DISTRICT COURT", compare State's addendum A and C (Complaint of January 26,1990) with Peterson's 10 page complaint of (May 8, 1990). State's attorney knew of change, see her ADDENDUM B, but she persisted in declaring "DUPLICATIVE COMPLAINT IS NOW PENDING", see her comparison of complaints page 6, paragraph center of page, where, in about 150 words she compares the complaints, "side by side". It is obvious that the plaintiff's attorney is misleading the court, claiming that a particular complaint "IS PENDING" when, in fact, she knows it is not pending, when in fact, "THE ATTEMPTED SERVICE WAS QUASHED" of the "DUPLICATIVE COMPLAINT", by the court, per a motion made by the plaintiff's attorney.

3.12 The defendant sought payment for his prior work before being required to continue working.

3.13 Note that the defendant has direct entitlement for payment for his work done because of the State's failure to have a good and sufficient payment bond.

Title 14, chapter 1, section 15 - **Liability of state or political subdivision failing to obtain bond.** requires that:

> If the state or one of its political subdivisions fails to obtain a payment bond, it shall, upon demand by a person who has supplied materials or performed labor under the applicable contract, promptly make payment to that person,

> and the creditor shall have a direct right of action on his account against the appropriate political entity in any court having jurisdiction in the count in which the contract was to be performed. The action shall be commenced within one year after furnishing of materials or labor.

Title 14, chapter 2, section 2 - **Failure to require bond - Direct liability - Limitation of actions.** requires that:

> Any person subject to the provisions of this chapter, who shall fail to obtain such good and sufficient bond, or to exhibit the same, as herein required, shall be personally liable to all persons who have furnished materials or performed labor under the contract for the reasonable value of such materials furnished or labor performed, not exceeding, however in any case the prices agreed upon. Actions to recover on such liability shall be commenced within one year from the last date the last materials were furnished or the labor performed.

3.14 The defendant made various motions that the plaintiff answer to defendant's counterclaim and various motions for judgment as follows:

Motions for relief were made and denied on dates as follows:

Motion for Default Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment for fraud - 4/12/90 -- Denied - 5/7/90

3.15 With repeated failure of the State to answer Peterson's counterclaim and repeated denial for judgement by the Court, Peterson appeals to the Supreme Court for a decision to reverse Judge Young's order to demobilize, default judgments, and variously styled motions and counterclaims, dated May 9, 1990.

(See DOCKETING STATEMENT of June 4, 1990)

3.16 Peterson's appeal was then denied in that there was not

then a final order to appeal from.

3.17 The defendant was denied his counterclaims.

4.0 ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

4.1 THERE HAS BEEN A TRIAL COURT RULING; The plaintiff prevailed and obtained a judgment order against the defendant that he do certain work of demobilization.

4.2 Per the order of the court, the defendant hired cranes, trucks, and people, and under considerable hardship defendant demobilized, moving hundreds of tons of equipment into storage he had to arrange for.

4.3 With the plaintiff's successful in obtaining judgment and the relief sought, the plaintiff motioned for dismissal of the matter which was granted.

4.4 The plaintiff statement in his BRIEF OF APPELLEE that

> "Judge young's final order presents two issues for review. First, - voluntarily dismiss its complaint. Second, whether Judge Young should have dismissed Mr. Peterson's counterclaim without prejudice as duplicative of his complaint before Judge Russon in Civil No. 90090523."
>
> is short cited, misleading, and deserving of judgment against the plaintiff's attorney for misleading the court, see 3.10 and 3.11 above.

4.5 The offer of the plaintiff to voluntary dismiss its complaint after order, sentence, and execution of the defendant is irrelevant, whats done is done.

4.6 The purporting that the defendant has another basis of

prosecuting his counterclaim, that it is "DUPLICATIVE OF THE COMPLAINT NOW PENDING BEFORE THE THIRD DISTRICT COURT" is a fraudulent lie, misleading the court, wherein the plaintiff knows that the court of Judge Russon refused to accept Peterson's complaint, because of length and its complications. Again because the plaintiff's misleading of the court, the defendant motions for judgment per 78-51-31, see 3.6 to 3.11 above.

4.7 The plaintiff State cited City of Monticello v. Christensen - Affirmed - The cited case was a criminal matter which affirmed that "The standard rule is that appellate jurisdiction is the authority to review the actions or judgements of an inferior tribunal upon the record made in that tribunal, and to affirm, modify or reverse such action or judgment."

4.8 The plaintiff also cited State v. Rio Vista Oil, Ltd., - Vacated and remanded - wherein the State sought a temporary restraining order, charging that Rio Vista, a gasoline retailer in Utah, offered to sell motor fuel below cost in Moab, Utah, and in American Fork.

Appeal and Error:

1) Supreme Court had to assume that trial judge found his findings and conclusions to be satisfactory on all particulars, despite inconsistency, where findings and conclusions were signed by trial judge and were not attacked on appeal as not representing his views.

2) Conclusions of law are not accorded added deference on appeal simply because they are denominated findings of fact; Supreme Court disregards labels and looks to substance.

3) Lower court's statutory interpretations are accorded no particular deference on appeal, but are assessed for correctness, as are any other conclusions of law.

5.0 NATURE OF THE CASE

5.1 The case involves a question of entitlement of the defendant to be paid for his technologies and equipment provided for and used on a government project.

5.2 In his "BRIEF OF APPELLEE" plaintiff states "case involves a question of disposition of equipment and defendant Peterson's counterclaim." Peterson's technology and equipment have partially been sold by the State of Utah to Union Pacific's "U.S. Pollution Co." Other of Peterson's equipment was demobilized by putting into storage as ordered of Peterson by the court. Nothing has been paid to Peterson for the state's usage of his technologies and equipment. They have not been taken by due process of law, Articles V and VII of the Constitution of the United States.

5.3 When the State of Utah complained against the defendant for him to continue with his equipment by demobilizing, Peterson counterclaimed for payment for the State's prior usage of his technologies and equipment.

5.4 When the State of Utah complained against the defendant for not having paid child support (when Peterson did not have monies and was out of work), Peterson counterclaim for payment for the State's prior usage of his technologies and equipment.

5.5 When the State with his wife ordered him from his home and

brought suit against him for divorce because of him not being able to support his family, Peterson counterclaimed for payment for the State's prior usage of his technologies and equipment.

5.6 In all, his counterclaims were ignored and not answered, and by so, Peterson is entitled to default judgment.

6.0 PRIOR PROCEEDINGS

6.1 Initially, when not paid, Peterson brought civil proceedings in the Federal District Court against The Argee Corporation. Attorney John P. Sampson interfered in this matter and suit was subsequently brought against him and his clients Robert Mouritsen and John McSweeney. This matter is currently before the Board of Appeals, Supreme Court No. 910079, see cover sheet reference. Sampson has fraudulently intervened between Peterson and his attorneys taking Peterson's assets for Mouritsen and McSweeney.

6.2 In this matter the defendant made a prior appeal the for reversal of a prior Judge Young court's ruling order and ask for relief for his previous costs and the additional costs of de-mobilization, (the costs of the courts ruling).

See DOCKETING STATEMENT of June 4, 1990

6.3 In the plaintiff's "BRIEF OF THE APPELLEE" he treats the matter as if no judgment order was ever rendered. After the court ruling order against the defendant, and then after the defendants performance per the court order, the plaintiff motioned for and obtained dismissal. By court order, the

defendant was thus forced to do additional work of demobilization without enumerations, contrary to his rights for payment and rights of defense per Articles V and VII of the U.S. Constitution.

7.0 STATEMENT OF RELEVANT FACTS

7.1 Peterson's technologies and equipment now still at Clive and other equipment which was stored on Gordon Lane were never sold to either the Argee Corporation or the State of Utah since they were not paid for per Article V of the U.S. Constitution. These properties were and remain the properties of Peterson even though they were used for three years by the State and his contractor, without payment to Peterson as noted.

7.2 The State's complaint of incurring ongoing expenses in storing Peterson's equipment is out of order. The stand of the State is like unto returning a rental car and asking for storage costs instead of paying for its usage. The State and its contractor did have an arrangement with Peterson to use his technologies and equipment to move the Vitro tailings. The arrangement required payment for said usage. The State or Argee never had any arrangement with Peterson for storage of his equipment. Peterson has not been paid for usage of his assets.

8.0 SUMMARY OF ARGUMENT

8.1 In the plaintiff's "BRIEF OF THE APPELLEE" he says that there are no justiciable issues. He is ignoring the fact that

the defendant believes that he was wrongfully given judgment and that he seeks restitution for the wrongful judgment as afforded to him per articles IV, V, and VII of the Constitution of the United State, wherein the government cannot take property from him without restitution and due process of law including trial by jury. Restitution must include costs of demobilization.

8.2 The State entered this case on the supposition of and from the position that they were keeper and storer of Peterson's properties from which they demanded relief.

8.3 In reality the State with its subcontractor was a contracted user of Peterson's technologies and equipment for which use the State and its subcontractor are responsible to pay; and, to obtain and hold bonding for its payment liability; of which they have done neither.

8.4 The defendant seeks to get this court matter in proper perspective.

8.5 The treatment of the defendant before Judge Young was grossly defective in its deficiencies.

8.6 In making judgment against him, the defendant's answers to complaint were ignored by the court, (his answers being included in his counterclaim and motions).

8.7 The plaintiff failed to answer to the defendant's counterclaim. At least five times the defendant demanded answers to his counterclaim. In some instances the plaintiff answered in

motions and in some instances the plaintiff simply failed to answer. Record of this and conversation of this between the plaintiff's attorney and the court is in the proceedings.

8.8 The plaintiff was crafty and deceiving in that it was able to obtain a dismissal of the matter while avoiding answering to the court the charges of the defendant's counterclaim.

8.9 The plaintiff has had opportunity (even in the BRIEF OF APPELLEE) to answer the real issues and should explain the merits of his position in taking the works of the defendant's without payment for them.

8.10 The plaintiff's craftiness and deceit in answering has now put it in a position of judgment whereby plaintiff claims that there has been no finding of facts; wherein there are no further facts and the plaintiff has no further defense except in his efforts to avoid the issue and seek relief solely by dismissal of this matter from review of the Supreme Court.

9.0 ARGUMENT

9.1 The defendant is entitled to judgement solely because of the plaintiff's failure to answer to the defendant's complaint.

9.2 The defendant also is entitled to judgment on the basis of merits of his complaint. Copies of the bogus bonding documents of the plaintiff are presented. The plaintiff's complaint of not completing de-mobilization evidences the work and technology.

9.3 <u>The court failed to recognize the defendants rights and the</u>

plaintiff's failure to answer to the defendant's complaint.

ARGUMENT

I. THERE ARE JUSTICIABLE ISSUES REMAINING IN THE DEFENDANTS' COUNTER-COMPLAINT AGAINST THE STATE AND, THE STATE FRAUDULENTLY DECEIVED THE COURT PURPORTING A LIE (78-51-31), THE COURT'S DISMISSAL OF THE MATTER IS BASED UPON A FALSE REPRESENTATION MADE BY THE ATTORNEY FOR THE PLAINTIFF. THE SUPREME COURT MUST REVIEW THE ACTION OF THE PLAINTIFF'S ATTORNEY AND RULING OF THE COURT IN VIEW OF CORRECT INFORMATION. FURTHERMORE, THE ISSUE IS NOT WHETHER PETERSON SHOULD BE RESPONSIBLE FOR STORAGE OF SAID EQUIPMENT, THE ISSUE IS THAT THE DEFENDANT SHOULD BE PAID FOR THE GOVERNMENTS'S USAGE OF SAID EQUIPMENT.

9.4 At issue is the State's requirement that the defendant continue work without payment for the previous work and without payment for the work immediately demanded; or contrarily, i.e. that the defendant shall be paid for his costs of providing said work.

9.5 The matter is now further complicated with additional monies owing to the defendant for his work in that the defendant has now accomplished the additional work of demobilization as sought by the complaint of the plaintiff.

9.6 The plaintiff states that "there no justiciable issues", and that "this issue has been resolved". This is true only in that the plaintiff obtained a judgment against the defendant and the defendant paid and performed according to the order of the court.

9.7 The defendant rightfully appeals this mater seeking relief from the order of the court and associated counterclaims for

costs of the judgment made against the defendant associated with the defendants constitutional rights and rights per state law as indicated.

9.8 Contrary to plaintiff claims, evidence of Peterson's claims were introduced into the lower court and the Supreme Court has record of this in Peterson's brief and Peterson's previously filed referenced papers.

9.9 On bottom of page 5 of appellee's brief, the plaintiff states that:

a) "The controversy arising from the State's complaint against Mr. Peterson and PEMCO is final"

b) "A judgment is final when it ends the controversy between the parties litigant."

9.10 Per his rightful entitlement, the defendant has appealed for relief and costs of Judge Young's ruling against the defendant.

9.11 The plaintiff has referred to another court matter of Peterson's before Judge Russon/Stirba. In comparison:

a) The contending parties in this matter are different.

b) The complaint of the state requiring additional work of demobilization is not an issue in the R/S matter.

c) There is no reason to expect that issues of the immediate matter (ruling order of Judge Young) should become issues in the Court of Judge Russon/Stirba.

d) Additional matters including the misrepresentation of the plaintiff's attorney and the failing of the plaintiff's attorney to answer the defendants complaint are issues in the immediate case requiring review. Wherein, these matters cannot be transferred to another matter (R/S case).

Judge Young's final order should be upheld and the plaintiff's appeal should be prosecuted by the Supreme Court.

9.12 The merits of the ruling order of Judge Young are rightfully appealed herein.

9.13 If the issues of matter in the ruling order of Judge Young should rightfully be instead in the matter of Judge Russon/Stirba, the plaintiff was out of order in bringing the issue into the court of Judge Young, in the first place.

9.14 The plaintiff's statement in II. on page 6 "THERE HAS BEEN NO TRIAL COURT RULING ON THE MERITS OF THE COUNTERCLAIM" is conflictive with fact, and with his statement in his CONCLUSION on page 8 wherein he writes of "the trial court's order granting the State's motion to voluntarily dismiss its complaint and dismissing Mr. Peterson's counterclaim against the State without prejudice."

9.15 There has been a ruling on the merits of Peterson's counterclaim, his counterclaim was dismissed.

9.16 In his appeal to the Supreme Court, the defendant is

rightfully entitled to the review of the merits of his counter-claim and its decision of dismissal by the trial court, according to the evidence of fact contained therein.

9.17 On page 7, line 19, the plaintiff writes of it being inequitable to defend the same action in two different lawsuits. Note that the defendant in seeking a fair treatment, has so far had to bring in this issue into six state courts and three federal courts - nine trial courts in all. This matter can rightfully, justly, and most speedily be determined in this proper appeal per Rule 1(a) as Utah Rules of Civil Procedure specifies.

9.18 Otherwise, this matter will be appealed to the federal courts of the United States, even appealed to the Supreme Court of the United States in order to obtain an equitable trial and payment for properties taken for government use per the rights of the defendant per the Constitutions of the United States.

9.19 The issues before the Supreme courts are the review of judgements of the trial court, not the matter's dismissal as the plaintiff wishes were the focus.

9.20 The review before the Supreme Court is the review of trial matter presented in proceedings. It is not the review and complaint of matter not present as the plaintiff complain's wherein anything missing is his deficiency.

9.21 Salt Lake City Corp. v. Layton was cited; wherein, a city brought suit against landowners, seeking an

injunction to compel removal of a fence, compensatory and punitive damages. The District Court ruled in favor of the city on its claim for injunctive relief, reserving ruling on the damage claims and the landowners claims; the landowners appealed. The appeal was dismissed in that the trial court's ruling was not a final judgment for purposes of appeal.

9.22 Court Judge Young did not reserve ruling, judgment was final, a dismissal now of the appeal is out of order.

9.23 Kennedy v. New Era Industries was cited; wherein judgment "imposing sanctions" for failure to respond adequately to interrogatories was not final for purposes of appeal where such judgment did not dispose of all parties and issues in litigation.

9.24 Court Judge Young did not impose sanctions, plaintiff's failure to answer to defendant's counterclaim was not error, or accident or misstatement, but simply unexcusable failure.

9.25 Within Kennedy v. New Era Industries was cited Rule 75(h) which provides: That if anything material to either party is omitted from the record on appeal by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the Supreme Court, ... on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary that a supplemental record shall be certified and transmitted by the clerk of the district court.

9.26 Of his own initiative, the defendant has included a different complaint and interrogatories and their respective answers. What is made apparent is that the State basically does not have answers to Peterson's counter-complaint but purports that its documents speak for themselves and its posture requires judgments of law, i.e. the plaintiff State has no information to

add.

9.27 Pilcher v. State Department of Social Services was cited. saying - matters not admitted in evidence before trier of fact will not be considered on appeal before Supreme Court.

9.28 By his counterclaim, defendant introduced the matter that he has not been paid for his previous work, that he has entitlement to be paid for his cost because the plaintiffs bond was defective, and that he has rights of keeping his corporate filings in Utah Division of Corporate Registrations. These admitted matters have entitlement to be considered on this appeal before the Supreme Court.

9.29 In answer to interrogatories on these matters, the State's representatives say the bonding laws, the Vitro contract bonding documents, and Peterson company's corporation file documents speak for themselves and that determination of these matters is a matter of determination of law. Of these matters, it is now appropriate for a determination law by the Supreme Court.

9.30 The plaintiff has had further opportunities and requirements to answer. By his answers before Judge Russon, the plaintiff has nothing to add to the matter in Judge Young. By the State's record in Judge Russon, matters must now be determined by judgments of Law, appropriately, the Supreme Court.

10.0 ADDENDUM COMPLAINT

10.1 R C Tolman Const. Co., v. Myton Water Ass'n, was cited; wherein a construction company appealed a District Court decision to withhold monies for damages because

> plaintiff overran contracted time period. The Supreme Court affirmed findings noting the presumption of validity and correctness of the judgment of the trial court; and require plaintiff to sustain the burden of showing error.

10.2 The plaintiff has shown its error, in its fraudulently purporting the existence of a duplicate pending complaint in another matter, when, in fact, the service of the purported complaint was "QUASHED by the plaintiff". The plaintiff has clearly shown that it fraudulently misled the trial court in its obtaining ruling and dismissal in its BRIEF OF APPELLEE court order of 7 May 1990 clearly rules out the "DUPLICATIVE NOW PENDING COMPLAINT" conjecture of the plaintiff. The plaintiff has shown no basis for continuing this matter in the court of Judge Russon/Stirba, but just the opposite. The plaintiff has made the cases distinctly different by fraudulently purporting "DUPLICATIVE PENDING COMPLAINTS" and by their demonstrated deceit in the court, another parties to the matter are brought in - attorneys R. Paul Van Dam, Brent A. Burnett, Denise Chancellor, and Richard K.Rathburn.

11.0 MOTION

11.1 The plaintiff State obtained dismissal in the Court of Judge Young on the basis that PETERSON'S COUNTERCLAIM IS DUPLICATIVE OF THE COMPLAINT NOW PENDING BEFORE THE COURT OF JUDGE RUSSON/STIRBA.

11.2 The plaintiff State is making the same representation of

DUPLICATIVE COMPLAINT IS NOW PENDING before the Supreme Court.

11.3 In the plaintiff's BRIEF OF APPELLEE, the plaintiff further made a comparison "side by side" of the defendant's counterclaim and a complaint, the same complaint quashed (not allowed by the plaintiff's motion) in the pending matter - court of Judge Russon/Stirba.

11.4 By her own submissions, (ADDENDUM B - BRIEF OF APPELLEE) the attorney for the plaintiff has deceived the court of Judge Young, and is attempting to likewise deceive the judges of the Supreme Court, by claiming that a complaint of Peterson's is NOW PENDING; when, in fact, the plaintiff's attorney had the service of it QUASHED!!!

11.5 Note further that the plaintiff's attorney knows which complaint is pending in the Russon/Stirba matter in that she answered the complaint.

11.6 The defendant motions that the court find that the plaintiff's attornies have unlawfully deceived judges of the court per Rule 78-51-31 and by doing so defendant Peterson is entitled to treble damages ($48.6M), for which he so motions.

12.0 SUMMARY

12.1 The State legislated law seems to have intent consistent with the intent of constitutional requirement Article V wherein an individual should be paid for his property taken and used for public use. The actions of the State's employees and the State's

court appear to be just the opposite, wherein their every efforts, even unlawful, are to deprive the individual of payment, even seizing his properties and preventing him from a fair jury trial, which rights Peterson has by Articles IV and VII of the Constitution.

12.2 Peterson's contribution to moving the Vitro Tailing were very substantial, wherein his engineering prescribed and made possible its movement by the railroad. This in spite of the tailing wetness problem, information of this being withheld by the State, and Peterson becoming the fall guy for the State's misrepresentation problems.

12.3 On a $50M project, $16.2M for his engineering, proprietary technology, and his equipment is not unreasonable. Since Peterson solely devised and made the working and the solving of the problem job possible, even being done in 2/3 of the allotted time, even $48.6M is justifiable. The court should rightfully award defendant treble his cost in this matter as prescribed by Constitutional and State laws.

13.0 SIGNATURE

Dated this 12th day of July, 1991.

William D Peterson

William D. Peterson, pro se

14.0 MAILING CERTIFICATE

CERTIFICATE OF DELIVERY

This is to certify that 4 (four) true and correct copies of the fore going

REPLY/BRIEF APPEAL, with ADDENDUM
COMPLAINT AND MOTION

are being delivered at the office of the Attorney General, State Capital building in Salt Lake City, Utah, per rule 5 (b)1 and rule 4 (e)(9), in an envelope addressed to:

R. PAUL VAN DAM - #3312 Attorney General
BRENT A. BURNETT - #4004 Assistant Attorney General
DENISE CHANCELLOR, USB #5452 Assistant Attorney General
RICHARD K. RATHBURN, USB #5183 Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1017

Attorneys for Plaintiff

Dated this 12th st day of July, 1991.

William D. Peterson

15.0 ADDENDUM

15.1 AFFIDAVIT of Mark S. Day, State of Utah - Vitro Project Mgr.
15.2 DOCKETING STATEMENT - Appeal from Judge Young orders June 4, 1990
15.3 NOTICE OF APPEAL - Appeal from Judge Young orders May 22, 1990
15.4 ORDER - Order of Judge Young appealed from May 9, 1990
15.5 COMPLAINT - filed in the court of Judge Russon, May 1990
15.6 ANSWERS - to complaint in the court of Judge Russon, June 6, 1990
15.7 INTERROGATORIES - Peterson's questions to State personnel
15.8 ANSWER TO INTERROGATORIES - Answers from State personnel

15.1

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

AFFIDAVIT

Mark S. Day, after first being duly sworn on oath, deposes and says:

1. I am employed by the Utah Bureau of Radiation Control, Utah Department of Health, as Project Manager of the Uranium Mill Tailings Remedial Action Projects and am responsible for administration of the Vitro tailings removal project at Clive, Utah.

2. Part of my responsibilities as Project Manager were/are planing and design, bidding and procurement, construction management, and completion and monitoring of the Vitro tailings removal project.

3. PEMCO and William D. Peterson contracted with the State's contractor, Argee Corporation, to catch and stack the Vitro tailings after Argee Corporation off-loaded the tailings from railroad cars when they arrived at the Clive site.

4. As a result of a contract dispute between PEMCO and Argee Corporation, the belt conveyor & hopper portion of equipment to which William D. Peterson and/or PEMCO claim ownership, after being in service for a short time, was no longer used for moving the tailings and was dismantled per Peterson design option from the tailings site in approximately July 1985.

tunnel out the tailings were not and could not be carried sufficiently to be handled in the by the 42" system as requested by Argee)

5. The equipment was moved to a nearby area, which was then owned by the State, because it interfered with Argee Corporation's operations.

6. Approximately two years later (1987) the Clive property where the equipment was located was sold by the State and the new owner requested that the equipment be moved from his property.

7. The State had difficulty in locating Mr. Peterson but eventually found him and gave him verbal notices to remove the equipment from the property the State had sold.

8. Neither Mr. Peterson nor PEMCO removed the equipment from the privately-owned Clive property.

9. In approximately February or March 1989 the last State contractor at the Vitro site, Wolff Excavating, was de-mobilizing the site and the State requested that Wolff Excavating move the equipment to its storage lot in Murray, Utah as the owner of the Clive property wanted his property cleared.

10. On May 16, 1989 Larry F. Anderson, Director, Utah Bureau of Radiation Control, wrote to Mr. Peterson and PEMCO to remove the equipment within 15 days from the storage lot at 154 East Gordon Lane, Murray, Utah.

11. On May 23, 1989 Mr. Peterson responded to Mr. Anderson's letter saying that he did not have a place to store the equipment.

12. On June 5, 1989 Mr. Anderson again wrote the Mr. Peterson and PEMCO to remove the equipment by June 23, 1989.

13. On August 4, 1989 Mr. Anderson wrote to Mr. Peterson and PEMCO stating that failure to take possession of the equipment was tantamount to abandoning the equipment and that the State intended to sell the equipment as surplus property to help defray its moving and storage costs.

14. To date Mr. Peterson or PEMCO have not moved the equipment and the State is incurring a $200 per month expense for storage of the equipment.

DATED this 3 day of APRIL, 1990.

Mark S. Day

SUBSCRIBED AND SWORN TO before me this 3rd day of April, 1990.

NOTARY PUBLIC
Residing at 5958 Sycamore Circle
Murray - Utah
My Commission Expires
6 July 1990

15.2

William D. Peterson II
Telephone (801) 485-9011
c/o Paul E. Peterson
1444 Murphy's Lane
Salt Lake City, Utah 84106
Telephone (801) 278-3435

June 4, 1990.

file:½Legal½sc-young½Y6-4.doc

IN THE SUPREME COURT OF THE STATE OF UTAH
SALT LAKE CITY, STATE OF UTAH

Utah State Department of Health Plaintiff, -vs- William D. Peterson & PEMCO Defendants, Petitioner	DOCKETING STATEMENT Supreme Court No. 900282 Appealed from Third District Court Civil No. 900901098 Judge David S. Young

Relating Supreme Court No. 900215

Pursuant to the provisions of Rule 9 of the Utah Rules of Appellate Procedure, the appellant files this docketing statement.

1. Jurisdiction to hear this appeal is conferred on this court by Utah Code Annotated, 1953, Sec 78-2-2, subsections (1) and (3)(c).

2. This appeal is from an order entered May 9, 1990 by Judge David S. Young in the Third Judicial District Court in and for Salt Lake County, State of Utah. The case was originally filed on February 23, 1990.

Motions for relief were made and denied on dates as follows:

Motion for Default Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment - 4/12/90 -- Denied - 5/7/90
Motion for Judgment for fraud - 4/12/90 -- Denied - 5/7/90

3. The order appealed was entered on the 12st day of May, 1990. A notice of appeal was filed in the clerk's office of the lower court on 22th day of May, 1990, service of motion under rules 50(b), 52(b), or 59.

4. The facts as to what happened are as follows:

4-1. The appeal on May 22th of the above named defendant is from that judgment entered by the above entitled court on the 12st day of May, 1990 and from the whole thereof. In all, relief from the

matter has been ask for in nine motions. This appeal is taken from the Third Judicial Court of Salt Lake County, State of Utah and is taken to the court of Appeals. Defendant is now situated in this matter where judgment has been made upon him without support of law wherein defendant is entitled to the benefits of judgment as a matter of law: Title 14, chapter 1, section 7 and 15 - Liability of State for failure to obtain payment bond, Title 63, chapter 56, Sec. 38 - Bonds necessary when contract is awarded, and Article V of the Constitution of the United States which requires that private property cannot be taken for public use without just compensation. Defendant is entitled as a matter of law and stands denied judgment without reason of law.

4-2. In 1985, the defendant in his capacity of a professional engineer furnished designs used for three years for the railroad dumping and transporting of the vitro tailings in Utah's west desert. Likewise, defendant in his capacity of owning equipment furnished equipment for rail car dumping and material transporting. Plaintiff through his contractor the Argee Corporation used defendant's design and equipment for some three years for moving the entire vitro tailings.

Defendant's company PEMCO originally contracted the vitro equipment work. Shortly after starting, plaintiffs contractor breached agreement by not making payment as contracted. Without payment, Pemco could not continue operating and the Argee-Pemco contract became void. After the breach, defendant personally contracted with Argee's manager Jack Adams to complete the work, and furthermore did completed work.

Defendant should be paid for usage of his designs, equipment and labor, and to continue supplying to plaintiff to demobilize. Defendant gave notice to the State that their project did not have a good and sufficient payment bond, that defendant was not being paid, and that litigation would result. When defendant was seeking payment in July of 1985, the State did not have a good and sufficient payment bond applicable to this their project. The project documents stated voiding requirements of a good and sufficient payment bond - (see voiding disclaimer).

Title 63, chapter 56, Sec. 38. requires that bonds necessary when contract is awarded. A representation of a bond was made and used. The representation was fraudulent. Defendant complained to the State for recourse because of the State's not having a good and sufficient payment bond. The State is liable to pay defendant by law because of their not having a good and sufficient payment bond as required per Title 14, chapter 1, Sec. 7. Liability of public body for failure to obtain payment bond.

The State is also liable to pay defendant by law per Title 14, chapter 1, Sec. 15. Liability of state or political subdivision failing to obtain bond. Plaintiff told defendant that before defendant could obtain recourse of payment from plaintiff, defendant must seek recourse from plaintiff's

contractor through legal channels of courts. Defendant followed plaintiffs instructions, doing as plaintiff instructed. Owner's attorney and engineer fraudulently instructed defendant to seek recourse from the Argee Corporation stating that they were not liable until defendant exhausted that recourse. But, by law the owner (State of Utah) was liable and their statements to defendant were fraudulent and misguiding to avoid the owner's responsibilities. The plaintiff owner is liable to the plaintiff for damages for their fraudulent misguidance and misrepresentations when defendant sought for payment.

This demand is proper and timely now in that the defendant contracted in writing, open ended, with Garth Wilson, to write of these problems to seek monies required to pay for costs of work. Plaintiff was rightfully in requirement to pay costs of defendant's work when their contractor breached his obligation, said requirement is in writing by the original "Project Manual".

> CONTRACT pg I-35, par 4: "In consideration of the foregoing premises, the Department agrees to pay to Contractor in the manner and in the amount provided in the said specifications and proposal."

The PERFORMANCE BOND section of the State's Vitro Project Manual cites (Title 14, Chapter 1, Utah Code Annotated 1953 further stating:

> "and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein."

Title 14, Chapter 1, Utah Code Annotated 1953 requires that if a subcontractor is not adequately paid by the general contractor which he is working for, then the State is obligated to pay the subcontractor for his costs of doing work. Note: The repealing of a section of law does not void its usage as wordage, definition, description and requirement, which the State used.

Furthermore, the project "BOND" documents specifically exempt Argee from requirements of payment bonding and paying their subcontractors.

> "NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof, then this obligation shall be void: otherwise to remain in full force and effect."

When this was brought to plaintiffs attention by defendant, plaintiff said that they errored in their contracting with Argee. Later, effective 15th of August 1985, the Plaintiff changed his contract document "PAYMENT BOND" section. Changes to the contract document on the 15th of August 1985 was done so as to have a good and sufficient payment bond. The effective date of

the good and sufficient "PAYMENT BOND" in the contract began August 1985, nearly a month after defendant provided his initial work. No good and sufficient "PAYMENT BOND" was effective during when defendant was doing his initial work, for which he needs payment. Payment bonding requirement provisions were added to the "Project Contract" on August 15, 1989 after defendant brought notice of plaintiffs deficiency to them.

The "PROJECT MANUAL" contract documents effective during when defendant was doing his work required that plaintiff pay for work of defendant if plaintiff's contractor failed to make payment which is the condition. When defendant complained to plaintiffs, plaintiffs instructed defendant to first seek payment from Argee through processes of the courts. According to plaintiffs instructions, defendant sought payment through the processes of the courts.

While seeking payment, defendant was blamed for problems associated with the material being wet, not dryable. The dryabality problems were not known by defendant, but known by plaintiff, this but information was withheld by defendant. The owner failed to inform its contractor Argee Corp or its engineer Peterson of owner's knowledge of the different conditions. Defendant was wrongfully held liable for the information had only by the owner and withheld by the owner. Conditions that were encountered differed materially from those indicated, which engineer relied upon to his detriment, thus engineer Peterson is entitled to recover because the contract documents misrepresented conditions that would be encountered. Entitlement is based upon referenced law. The defendant was defamed in his industry and family, and still not paid. The plaintiff owner is responsible to the defendant for his costs, losses, and damages for their withholding of information.

If plaintiffs claim this action by the defendant is not timely, then plaintiffs instruction to the defendant were fraudulent. According to law, defendant has properly notified plaintiff of his dilemma and losses giving "notice of claim."

The court in the "STATE OF UTAH OFFICE OF RECOVERY SERVICE" is a "court having jurisdiction in the county in which the contract was performed and executed" per 14-1-7 and 14-1-15. Defendant made a proper claim and action in a court having jurisdiction in the county where defendant's labors (his technologies) and his equipment was being used. Plaintiffs are liable to defendant by default for their failure to answer.

The Peterson's family income had been only around $7,000 per year because of their business being crippled from not being paid for its work, thus they became vulnerable from outsiders. Evidently with a call from an attorney John P. Sampson and by his supposed letter, Sampson apparently persuaded State attorney Peter Van Alstein to disallow or remove previous filings of the board of directors of current record, which directors were of

record of the initial filing of Peterson's corporation. The effect of Sampson's actions were to take control of defendant's business and give control to Sampson's clients Robert Mouritsen and John McSweeney who have repeatedly and fraudulently filed as officers and directors over the filing of Peterson and his lawfully initially registered directors to steal Peterson's and His family's business and properties.

Attorney John P. Sampson's in affidavit fraudulently claims to be attorney and representative for Riverside Machine and Fabrication (MAC Industries) back in June of 1986 and since. In contradiction, in the court of Judge John Rokich in affidavit attorney John P. Sampson states that he has never been attorney for Peterson or any of his businesses. Attorney Van Alstein for the State of Utah told Peterson that anyone at anytime can come to his division and file themselves as officers and directors of any corporation on file in the state of Utah. State Attorney Van Alstein has no basis for removing filed documents. The plaintiff's operation of his Corporations and Commercial Code Division allowed the invasion of others into and over defendant's business. The plaintiff's attorney Peter Van Alstein intervened and canceled defendant's proper and lawful filings of his business posturing his company for a fraudulent takeover allowable and possible because of unlawful actions and bad operation code of the plaintiff's (The State of Utah).

The plaintiff is thus liable to the defendant for his overturned taking of his business and properties, property he was deprived of, without due process of law guaranteed to him by ARTICLE V of the Constitution and taken without the right of trial jury preserved to him by ARTICLE VII of the Constitution. Attorney Van Alstein further stated that he would welcome a law suite in this matter to obtain decisions of how to deal with this perpetual problem relating to paper thievery of Utah Corporations.

5. The issues are:

5-1. Is the defendant entitled to payment for cost in providing his property for public use.

5-1. Is the defendant entitled to payment for cost in providing for a public project which requires by law payment bonding and the contract bonding documents were deficient, fraudulent, misrepresenting, and not proper and timely.

5-2. Is the defendant entitled to make keep instated filings in the State's division of Corporations. Can the State remove defendant's filings allowing filing over him and theft of his business.

a) entitlement according to Article V of the Constitu.

the United States.
b) Title 14, chapter 1, section 7 and 15 - Liability of State for failure to obtain payment bond
c) Title 63, chapter 56, Sec. 38 - Bonds necessary when contract is awarded.

7. There is one prior appeal related to this one, now before this Court, an appeal No. 900215 of the Judgment of Judge John Rokich in case # 50-265-1148 dated the 17th day of April 1990 in the Third Judicial District Court in and for Salt Lake County, State of Utah is appealed to this Supreme Court. This case relates in that this matter was also in the hands of representation of attorney John Sampson who mishandled it badly. Sampson's handling had an appearance of compromise and of washing matters under the table to rid Peterson to allow Sampson's other clients to take and steal Peterson's business from him.

8. Attachments:

a) Copies of the judgment of 5/12/90 appealed.
b) No findings of the court were given.
c) Notice of appeal - 5/22/90.

Motions denied, Judgment requested

d) Motion for Judgment per Article V of Constitution of the United States - originally filed 4-12-90.
e) Motion for Judgment per Utah law Title 14, chapter 1 sections 7 & 15 - originally filed 4-12-90.
f) Motion for Judgment per Utah law Title 14, chapter 1, sections 7 & 15 - originally filed 4-12-90.
g) Motion for Judgment for Fraud - originally filed 4-12-90.

Motion related to Supreme Court Case No. 900215

h) Motion for Reinstatement of Documents filed in Division of Corporations.

Dated this 1st day of June, 1990.

William D. Peterson, pre se

CERTIFICATE OF DELIVERY

This is to certify that a true and correct copy of the fore going

DOCKETING STATEMENT

are being delivered at the office of the Attorney General, State Capital building in Salt Lake City, Utah, per rule 5 (b)1 and rule 4 (e)(9), in an envelope addressed to:

R. PAUL VAN DAM - 3312
Attorney General
BRENT A. BURNETT - 4004
Assistant Attorney General
DENISE CHANCELLOR, USB #5452
Assistant Attorney General
RICHARD K. RATHBURN, USB #5183
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1017

Attorneys for Plaintiff

Dated this 4th day of June, 1990.

William D. Peterson

State of Utah vs. Wm Peterson
April 24, 1990

William D. Peterson
c/o Paul E. Peterson
1444 Murphy's Lane
Salt Lake City, Utah 84106
Telephone (801)278-3435, 485-9011

May 22, 1990

file:\StCC\Y5-22.AFL

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

Utah State Department of Health Plaintiff, -vs- William D. Peterson & PEMCO - Defendants	NOTICE OF APPEAL Civil No. 900901098 Judge David S. Young

---

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please take notice that the above named First Party Defendant appeals from that judgment entered by the above entitled court on the 9th day of May, 1990 and from the whole thereof. This appeal is taken from the Third Judicial Court of Salt Lake County, State of Utah and is taken to the court of Appeals (The Utah Supreme Court). A Petition for Interlocutory Appeal and a motion for judgment will follow.

Dated this 22 day of May, 1990.

William D Peterson

William D. Peterson, Defendant

15.4

R. PAUL VAN DAM
Attorney General
DENISE CHANCELLOR, USB # 5452
Assistant Attorney General
RICHARD K. RATHBUN, USB #5183
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1017

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

UTAH STATE DEPARTMENT OF HEALTH,	:	
Plaintiff,	:	O R D E R
v.	:	Civil No. 900901098
WILLIAM D. PETERSON AND PEMCO	:	
Defendants.	:	Judge David S. YOUNG

The above captioned matter came before the Court, Honorable David S. Young presiding, on May 7, 1990, for hearing on Plaintiff's Order to Show Cause. The Defendant also raised a motion for default judgment and other associated motions appearing in Defendants' Answer and Counter Claim.

William D. Peterson appeared pro se, stating that he would proceed without counsel. The Plaintiff was represented by Denise Chancellor and Brent Burnett, Assistant Attorneys General.

The Court, having heard the arguments from Mr. Peterson and from counsel for the Plaintiff, and having reviewed the

record before it, now, for good cause appearing, enters the following order:

IT IS HEREBY ORDERED that the Defendants have 30 days, without extension, to remove the equipment described in Plaintiff's complaint and located at 154 E. Gordon Lane, Murray, Utah. If all the equipment is not removed on or before 5:00 p.m. Friday, June 8, 1990 then the equipment will be deemed forfeited to the State and may be sold as abandoned property under the State Surplus Property statute. All proceeds from the sale of the abandoned property may be applied to liquidate the State's storage, transportation and other costs associated with moving and storing the said equipment, with any remaining funds remitted to Mr. Peterson. If the Defendants remove the equipment within 30 days then the State must bring a separate civil action in order to recoup expenses it incurred in the moving and storage of the equipment.

IT IS ALSO ORDERED the Defendants' Motion for Default Judgment and other variously styled motions appended to Defendants' Answer and Counter Claim are hereby denied.

Dated this 9th day of May, 1990.

BY THE COURT:

JUDGE DAVID S. YOUNG
Third District Court

15.5

William D. Peterson
c/o Paul E. Peterson
1444 Murphy's Lane
Salt Lake City, Utah 84106
Telephone (801)278-3435, 485-9011

file: \legal\state\NewComp.ans

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

William D. Peterson - Plaintiff, -vs- The State of Utah Mark S. Day, Fred Nelson Kenneth L. Alkema Peter Van Alstein - Defendants	COMPLAINT amended from previous filing of 26th Jan 1990 Civil No. 900900523 Judge Leonard H. Russon

This action is brought pursuant to authority given by Title 14, chapter 1, Section 7 and Section 15. Liability of state or failure to obtain payment bond. Also, liability of the government to pay just compensation for property taken and used as provided by law of the CONSTITUTION OF THE UNITED STATES, ARTICLE V.

I

1. Plaintiff is an individual presently having residence at 1444 Murphy's Lane, Salt Lake City, Utah 84106.
Chancellor - Admitted
Hubbell - without sufficient knowledged, therefore denied

2. Plaintiff in his capacity of a professional engineer furnished designs used for three years for the railroad dumping and transporting of the vitro tailings in Utah's west desert; and, plaintiff did also do and provide many types of labor.
C - without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

3. Likewise, plaintiff in his capacity of owning equipment furnished equipment for rail car dumping and mat'l transporting.
C - Without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

4. Defendant through his contractor the Argee Corporation used plaintiff's design and equipment for some three years for moving the entire vitro tailings. C - denied
Hubbell - without sufficient knowledged, therefore denied

Mem, see Mark Kluga AFFIDAVIT of 3 April.

II

5. Defendants Day and Alkema reside at the State of Utah DEPARTMENT OF HEALTH, DIVISION OF ENVIRONMENTAL HEALTH at 288 North 1460 West, P.O. Box 16690 Salt Lake City, Utah 16690-0690. Their attorney, defendant Fred Nelson is a staff attorney of the Utah Attorney General's office at the State Capital Building, County of Salt Lake. Peter Van Alstein is the Director of Divisions of Corporations and Commercial Code in the Wells Bldg at 160 E 3rd South in Salt Lake City.

C - admitted, Hubbell - admits

ALLEGATIONS AND COMPLAINTS

6. Plaintiff's company PEMCO originally contracted the vitro equipment work.

C - Without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

7. Shortly after starting, defendants contractor breached agreement by not making payment as contracted.

C - Without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

8. Without payment, Pemco could not continue operating and the Argee-Pemco contract became void.

C - Without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

9. After the breach, plaintiff personally contracted with Argee's manager Jack Adams to complete the work, and furthermore did completed work.

C - Without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

10. Plaintiff should be paid for usage of his designs, equipment and labor, and to continue supplying to defendant to demobilize.

C - denied
Hubbell - without sufficient knowledged, therefore denied

11. Plaintiff gave notice to the State that their project did not have a good and sufficient payment bond, that plaintiff was not being paid, and that litigation would result.

C - denied
Hubbell - without sufficient knowledged, therefore denied

12. When plaintiff was seeking payment in July of 1985, the State did not have a good and sufficient payment bond applicable to this their project.

C - denied
Hubbell - without sufficient knowledged, therefore denied

13. The project documents stated voiding requirements of a good and sufficient payment bond - (see voiding disclaimer).
C - documents speak for themselves, denied
Hubbell - without sufficient knowledged, therefore denied

14. Title 63, chapter 56, Sec. 38. requires that bonds necessary when contract is awarded.
C - Code speaks for itself, denied
Hubbell - without sufficient knowledged, therefore denied

15. A representation of a bond was made and used.
C - without knowledge, therefore denied
Hubbell - without sufficient knowledged, therefore denied

16. The representation was fraudulent.
C - denied
Hubbell - without sufficient knowledged, therefore denied

17. Plaintiff complained to the State for recourse because of the State's not having a good and sufficient payment bond.
C - admit plaintiff complained, deny bond not good & suf.
Hubbell - without sufficient knowledged, therefore denied

18. The State is liable to pay plaintiff by law because of their not having a good and sufficient payment bond as required per Title 14, chapter 1, Sec. 7. Liability of public body for failure to obtain payment bond.
C - denied
Hubbell - without sufficient knowledged, therefore denied

19. The State is also liable to pay plaintiff by law per Title 14, chapter 1, Sec. 15. Liability of state or political subdivision failing to obtain bond.
C - denied
Hubbell - without sufficient knowledged, therefore denied

20. Defendant told plaintiff that before plaintiff could obtain recourse of payment from defendant, plaintiff must seek recourse from defendant's contractor through legal channels of courts.
C - denied
Hubbell - without sufficient knowledged, therefore denied

21. Plaintiff followed defendants instructions, doing as defendant instructed.
C - without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

22. Owner's representatives fraudulently instructed plaintiff to seek recourse from the Argee Corporation stating that they were not

liable until plaintiff exhausted that recourse.
C - without knowledge, denied
Hubbell - without sufficient knowledged, therefore denied

23. But, by law the owner (State of Utah) was liable and their statements to plaintiff were fraudulent and misguiding to avoid the owner's responsibilities.
C - denied
Hubbell - without sufficient knowledged, therefore denied

24. The defendant owner is liable to the defendant for damages for their fraudulent misguidance and misrepresentations when plaintiff sought for payment.
C - denied
Hubbell - without sufficient knowledged, therefore denied

25. This demand is proper and timely now in that the plaintiff contracted in writing, open ended, with Garth Wilson, to write of these problems to seek monies required to pay for costs of work.
C - denied
Hubbell - without sufficient knowledged, therefore denied

26. Defendant was rightfully in requirement to pay costs of plaintiff's work when their contractor breached his obligation, said requirement is in writing by the original "Project Manual".
CONTRACT pg I-35, par 4: "In consideration of the foregoing premises, the Department agrees to pay to Contractor in the manner and in the amount provided in the said specifications and proposal."
C - denied
Hubbell - without sufficient knowledged, therefore denied

27. The PERFORMANCE BOND section of the State's Vitro Project Manual cites (Title 14, Chapter 1, Utah Code Annotated 1953 further stating:
"and all liabilities on this bond shall be determined in accordance with said provisions to the same extent as if it were copied at length herein."
C - bond speaks for itself, denied
Hubbell - without sufficient knowledged, therefore denied

28. Title 14, Chapter 1, Utah Code Annotated 1953 requires that if a subcontractor is not adequately paid by the general contractor which he is working for, then the State is obligated to pay the subcontractor for his costs of doing work.
Note: The repealing of a section of law does not void its usage as wordage, definition, description and requirement, which the State used.
C - Title speaks for itself, denied
D - denies, no relation to Van Alstyne

29. Furthermore, the project "BOND" documents specifically exempt Argee from requirements of payment bonding and paying their subcontractors.

"NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof, then this obligation shall be void: otherwise to remain in full force and effect."

C - denied D - denies, no relation to Van Alstyne

30. When this was brought to defendants attention by plaintiff, defendant said that they errored in their contracting with Argee.

C - denied

H - without sufficient knowledged, therefore denied

31. Later, effective 15th of August 1985, the Defendant changed his contract document "PAYMENT BOND" section.

C - denied

H - without sufficient knowledged, therefore denied

32. Changes to the contract document on the 15th of August 1985 was done so as to have a good and sufficient payment bond.

C - denied

H - without sufficient knowledged, therefore denied

33. The effective date of the good and sufficient "PAYMENT BOND" in the contract began August 1985, nearly a month after plaintiff provided his initial work.

C - denied

H - without sufficient knowledged, therefore denied

34. No good and sufficient "PAYMENT BOND" was effective during when plaintiff was doing his initial work, for which he needs payment.

C - denied

H - without sufficient knowledged, therefore denied

35. Payment bonding requirement provisions were added to the "Project Contract" on August 15, 1989 after plaintiff brought notice of defendants deficiency to them.

C - denied

H - without sufficient knowledged, therefore denied

36. The "PROJECT MANUAL" contract documents effective during when plaintiff was doing his work required that defendant pay for work of plaintiff if defendant's contractor failed to make payment which is the condition.

C - manual speaks for itself, denied

H - without sufficient knowledged, therefore denied

37. When plaintiff complained to defendants, defendants instructed plaintiff to first seek payment from Argee through processes of the courts.
C - denied, but admit informing of recourses
H - without sufficient knowledged, therefore denied

38. According to defendants instructions, plaintiff sought payment through the processes of the courts.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

39. In seeking payment, plaintiff was blamed for problems associated with the material being wet, not dryable.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

40. The dryabality problems were not known by plaintiff, but known by defendant, this but information was withheld by plaintiff. C - denied
H - without sufficient knowledged, therefore denied

41. The owner failed to inform its contractor Argee Corp or its engineer Peterson of owner's knowledge of the different conditions.
C - denied
H - without sufficient knowledged, therefore denied

42. Plaintiff was held liable for the information had only by the owner and withheld by the owner.
C - denied
H - without sufficient knowledged, therefore denied

43. Conditions that were encountered differed materially from those indicated, which engineer relied upon to his detriment, thus engineer Peterson is entitled to recover because the contract documents misrepresented conditions that would be encountered. Entitlement is based upon referenced law.
C - denied
H - without sufficient knowledged, therefore denied

44. The plaintiff was defamed in his industry and family, and still not paid.
C - denied
H - without sufficient knowledged, therefore denied

45. The defendant owner is responsible to the plaintiff for his costs, losses, and damages for their withholding of information.
C - denied
H - without sufficient knowledged, therefore denied

46. If defendants claim this action by the plaintiff is not timely, then defendants instruction to the plaintiff were fraudulent. C - denied
H - without sufficient knowledged, therefore denied

47. According to law, plaintiff has properly notified defendant of his dilemma and losses giving "notice of claim."
C - denied
H - without sufficient knowledged, therefore denied

48. The court in the "STATE OF UTAH OFFICE OF RECOVERY SERVICE" is a "court having jurisdiction in the county in which the contract was performed and executed" per 14-1-7 and 14-1-15.
C - denied
H - without sufficient knowledged, therefore denied

49. Plaintiff made a proper claim and action in a court having jurisdiction in the county where plaintiff's labors (his technologies) and his equipment was being used.
C - denied
H - without sufficient knowledged, therefore denied

50. Defendants are liable to plaintiff by default for their failure to answer. C - denied
H - without sufficient knowledged, therefore denied

51. The Peterson's family income had been only around $7,000 per year because of their business being crippled from not being paid for its work, thus they became vulnerable from outsiders.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

52. Evidently with a call from an attorney John P. Sampson and by his supposed letter, Sampson apparently persuaded State attorney Peter Van Alstein to disallow or remove previous filings of the board of directors of current record, which directors were of record of the initial filing of Peterson's corporation.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

53. The effect of Sampson's actions were to take control of plaintiff's business and give control to Sampson's clients Robert Mouritsen and John McSweeney who have repeatedly and fraudulently filed as officers and directors over the filing of Peterson and his lawfully initially registered directors to steal Peterson's and His family's business and properties.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

54. Attorney John P. Sampson's in affidavit fraudulently claims to be attorney and representative for Riverside Machine and Fabrication (MAC Industries) back in June of 1986 and since.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

55. In contradiction, in the court of Judge John Rokich in affidavit attorney John P. Sampson states that he has never been attorney for Peterson or any of his businesses.
C - without knowledge, therefore denied
H - without sufficient knowledged, therefore denied

56. Attorney Van Alstein for the State of Utah told Peterson that anyone at anytime can come to his division and file themselves as officers and directors of any corporation on file in the state of Utah.
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

57. State Attorney Van Alstein has no basis for removing filed documents.
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

58. The defendant's operation of his Corporations and Commercial Code Division allowed the invasion of others into and over plaintiff's business.
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

59. The defendant's attorney Peter Van Alstein intervened and canceled plaintiff's proper and lawful filings of his business posturing his company for a fraudulent takeover allowable and possible because of unlawful actions and bad operation code of the defendant's (The State of Utah).
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

60. The defendant is thus liable to the plaintiff for his overturned taking of his business and properties, property he was deprived of, without due process of law guaranteed to him by ARTICLE V of the Constitution and taken without the right of trial jury preserved to him by ARTICLE VII of the Constitution.
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

61. Attorney Van Alstein further stated that he would welcome a law suite in this matter to obtain decisions of how to deal with this perpetual problem relating to paper thievery of Utah

Corporations.
C - to be answered by Van Alstyne, wrongdoing denied
H - denies the allegations

ENTITLEMENT

62. Peterson has lost 1/4 million dollars in direct costs not paid for in providing equipment and technology to move the Vitro tailings and additional costs of six million dollars for losses to his businesses and additional costs of ten million dollars for damages to his children and marriage.
C - denied
H - denies the allegations

III

Wherefore, plaintiff prays as follows:
63. A temporary restraining order issued restraining defendant, his servants, and employees, form selling plaintiff's equipment.
64. A preliminary injunction issue enjoining defendant, his servants, and employees, from using plaintiff's designs and equipment without paying plaintiff for his cost of providing said designs and equipment.
65. That the court enforce a default judgment for defendant's failure to answer plaintiff's claims of January 6th of 1989.
66. That the court finds defendants in default for not providing a timely good and sufficient payment bond as required by law.
67. On a final hearing, defendant, his agents, servants, and employees be permanently enjoined from ever using plaintiff's designs and equipment without paying plaintiff for his cost of providing said designs and equipment.
68. That plaintiff receive costs and expenses incurred in this action.
67. That the plaintiff receive entitlement for damages for defendant's withholding of information detriment to plaintiff.
That the plaintiff receive entitlement for the fraudulent representations of conditions and bonding of the defendant.
70. That Plaintiff receive such other additional relief as the court deems proper.
Certified in affidavit as true and thus dated this ___th day of May 1990.

William D. Peterson

COPY

R. PAUL VAN DAM (#3312)
Attorney General
Melissa Hubbell (#5090)
Assistant Attorney General
Tax & Business Regulation Division
130 Utah State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1019

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

WILLIAM D. PETERSON, Plaintiff, v. THE STATE OF UTAH Mark S. Day, Fred Nelson Kenneth L. Alkema Peter Van Alstyne Defendants.	ANSWER of Division of Corporations and Commercial Code, Department of Commerce, Peter Van Alstyne Civil No. 900-90053 Honorable Leonard H. Russon

Defendant, Peter Alstyne in his capacity as Director of the Department of Commerce, Division of Corporations and Commercial Code, ("Department of Commerce"), by and through counsel, Melissa M. Hubbell, Assistant Attorney General, answers Plaintiff's Complaint as follows:

FIRST DEFENSE

Division responds to the specific allegations of Plaintiff's complaint as follows.

1. Defendant is without sufficient knowledge and information to determine the truth or falsity of the allegations contained in paragraphs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Plaintiff's complaint and therefore denies the same. Furthermore, these particular allegations relate specifically to allegations against defendants Mark S. Day, Fred Nelson and Kenneth L. Alkema and the same will be answered by them in a separate response.

2. Defendant admits to the allegations contained in paragraph 5.

6. Defendant denies the allegations contained in paragraphs 28 and 29 of the plaintiff's complaint. Furthermore, these particular allegations have no relation to the complaint against Peter Van Alstyne who is being sued on behalf of the Division.

7. Defendant is without sufficient knowledge and information to determine the truth or falsity of the allegations contained in paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, and 55 of the Plaintiff's complaint and therefore denies the same.

Furthermore, these particular allegations relate specifically to allegations against defendants Mark S. Day, Fred Nelson and Kenneth L. Alkema and the same will be answered by them in a separate response.

8. Defendant denies the allegations contained in paragraphs 56, 57, 58, 59, 60, 61 and 62 of the plaintiff's complaint.

GENERAL DENIAL

Defendants, and each of them, deny each and every allegation of plaintiff's complaint not expressly admitted in this answer.

AFFIRMATIVE DEFENSES

SECOND DEFENSE

This court lacks jurisdiction over the subject matter of the plaintiff's claims against the defendants.

THIRD DEFENSE

Plaintiff fails to state a claim upon which relief may be granted.

FOURTH DEFENSE

Plaintiff has failed to comply with the Governmental Notice of Claim provisions, which is a condition precedent to filing this action.

FIFTH DEFENSE

Defendant, the State of Utah, has not waived its sovereign immunity and, accordingly, plaintiff's claims for relief are barred.

SIXTH DEFENSE

Plaintiff's alleged causes of action, and each of them, are barred by the applicable statute of limitations.

SEVENTH DEFENSE

Plaintiff, as a party to previously settled lawsuits involving the same issues that are alleged in this action, is collaterally estopped from bringing the instant action.

EIGHTH DEFENSE

Plaintiff's alleged causes of action are barred by the equitable doctrines of estoppel, waiver, and/or laches.

NINTH DEFENSE

Any contractual claims against any or all defendants asserted by the plaintiff, which claims defendants specifically deny, are barred because there is no privity of contract between the plaintiff and the defendants.

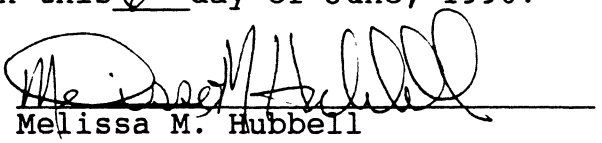
TENTH DEFENSE

Plaintiff alleges that he is entitled to a default judgment for claims he made against the defendants in an administrative action before the State Office of Recovery Services (see paras. 48-50 of the plaintiff's complaint). Plaintiff has previously alleged these same claims in other pleadings and has been informed by various judges that the Office of Recovery Services conducts administrative hearings and has no jurisdiction to entertain the claims alleged by the plaintiff. In addition, plaintiff also alleges claims of fraud and defamation against the defendants. These claims are without

merit and have not been brought or asserted in good faith and, as a result, the defendants are entitled to award of attorneys' fees for defending such claims pursuant to the provisions of Utah Code Ann. § 78-27-56. (1953, as amended).

WHEREFORE, having fully answered the Complaint, the defendants requests that said claims be dismissed and the relief prayed for by the plaintiff be denied, and that the defendants be awarded their costs, attorneys fees and such other relief as the court may deem appropriate.

RESPECTFULLY submitted on this 6 day of June, 1990.



Melissa M. Hubbell
Assistant Attorney General
Tax & Business Regulation Div.

CERTIFICATE OF SERVICE

I hereby certify that on this 6 day of June, 1990, I caused to be mailed via United States Postal Service, first class, postage prepaid, a true and accurate copy of the foregoing ANSWER, first class, postage prepaid, to:

William D. Peterson
c/o Paul E. Peterson
1444 Murphy's Lane
Salt Lake City, Utah 84106
Telephone (801)775 -1483, 485-9011

Plaintiffs

Melissa M. Hubbell
Assistant Attorney General
Tax & Business Regulation Div.

R. PAUL VAN DAM, USB #3312
Attorney General
DENISE CHANCELLOR, USB #5452
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1017

Attorneys for Defendants

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. PETERSON, Plaintiff, v. THE STATE OF UTAH, MARK S. DAY, FRED NELSON, KENNETH L. ALKEMA PETER VAN ALSTYNE, Defendants.	ANSWER OF STATE OF UTAH, MARK S. DAY, FRED NELSON AND KENNETH L. ALKEMA Civil No. 900900523 Judge L. H. RUSSON

Comes now defendants, the State of Utah; Mark S. Day in his capacity as Project Manager, UMTRA Projects, Bureau of Radiation Control, Utah Department of Health; Fred Nelson, in his capacity as Assistant Attorney General for the State of Utah; and Kenneth L. Alkema, in his capacity as Director of Environmental Health, Utah Department of Health and answers Plaintiff's Complaint as follows:

FIRST DEFENSE

Defendants answer, admit and deny the specific averments of plaintiff's complaint as follows:

1. Paragraph 1 is admitted

2. Defendants are without knowledge sufficient to form a belief as to the truth of the matter alleged in paragraphs 2 and 3 and the same are therefore denied.

3. Paragraph 4 is denied.

4. Paragraph 5 is admitted.

5. Defendants are without knowledge sufficient to form a belief as to the truth of the matter alleged in paragraph 6 and the same are therefore denied.

6. Defendants are without knowledge sufficient to form a belief as to the truth of the matter alleged in paragraphs 7 through 9 and the same are therefore denied.

7. Paragraphs 10 through 12 are denied.

8. The project documents for the Vitro Tailings Project speaks for themselves and to the extent that paragraph 13 is inconsistent with those documents, the same is denied.

9. Utah Code Annotated § 63-56-38 (1953, as amended) speaks for itself and to the extent that paragraph 14 is inconsistent with the statute, the same is denied.

10. Defendants are without knowledge sufficient to form a belief as to the truth of the matter alleged in paragraph 15 and the same is therefore denied.

11. Paragraph 16 is denied.

12. Defendants deny the allegation in paragraph 17 that they did not have a good and sufficient payment bond but admit that plaintiff complained to the State.

13. Paragraphs 18 through 20 are denied.

14. Defendants are without knowledge sufficient to form a belief as to the truth of the matters alleged in paragraphs 21 and 22 and the same are therefore denied.

15. Paragraphs 23 through 26 are denied.

16. The performance bond for the Vitro Tailings Project speaks for itself and to the extent that the plaintiff's characterizations in paragraph 27 are inconsistent with the language of the performance bond, the same are denied.

17. Title 14, Chapter 1, Utah Code Annotated 1953 speaks for itself and, accordingly, defendants deny plaintiff's characterizations in paragraph 28.

18. Paragraphs 29 through 35 are denied.

19. The Project Manual for the Vitro Tailings Project speaks for itself and any characterizations made by the plaintiff in paragraph 36 are denied.

20. Paragraph 37 is denied but defendants admit that they informed plaintiff that his recourse was against the contractor, Argee Corporation, and the bonding companies.

21. Defendants are without knowledge sufficient to form a belief as to the truth of the matters alleged in paragraphs 38 and 39 and the same are therefore denied.

22. Paragraph 40 through 50 are denied.

23. Defendants are without knowledge sufficient to form a belief as to the truth of the matter alleged in paragraphs 51 through 55 and the same are therefore denied.

24. Paragraphs 56 through 61 relate specifically to allegations against defendant Peter Van Alstyne and the same will be answered by Mr. Van Alstyne under a separate response and to the extent that the allegations in paragraphs 56 through 61 charge the defendants answering herein with wrongdoing or liability the same are denied.

25. Paragraph 62 is denied.

GENERAL DENIAL

Defendants, and each of them, deny each and every allegation of plaintiff's complaint not expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

SECOND DEFENSE

The court lacks jurisdiction over the subject matter of plaintiff's claims against the defendants.

THIRD DEFENSE

Plaintiff fails to state claim upon which relief may be granted.

FOURTH DEFENSE

Plaintiff has failed to comply with the governmental Notice of Claim provisions, which is a condition precedent to filing this action.

FIFTH DEFENSE

Defendant, the State of Utah, has not waived its sovereign immunity and, accordingly, plaintiff's claims for relief are barred.

SIXTH DEFENSE

Plaintiff's alleged causes of action, and each of them, are barred by the applicable statute of limitations.

SEVENTH DEFENSE

Plaintiff, as a party to previously settled lawsuits involving the same issues that are alleged in this action, is collaterally estopped from bringing the instant action.

EIGHTH DEFENSE

Plaintiff's alleged causes of action are barred by the equitable doctrines of estoppel, waiver, and/or laches.

NINTH DEFENSE

Any contractual claims against any or all defendants asserted by the plaintiff, which claims defendants specifically deny, are barred because there is no privity of contract between plaintiff and the defendants.

TENTH DEFENSE

Plaintiff alleges that he is entitled to a default judgment for claims he made against the defendants in an administrative action before the State of Utah Office of Recovery Service (*see* paras. 48-50 of plaintiff's complaint). Plaintiff has previously alleged these same claims in other pleadings and has been informed by various judges that the Office of Recovery Services conducts administrative hearings and has no jurisdiction to entertain the claims alleged by the plaintiff. In addition, plaintiff also alleges claims of fraud and defamation against the defendants. These claims are without merit and have not been

brought or asserted in good faith and, as a result, defendants are entitled to an award of attorneys' fees for defending such claims pursuant to the provisions of Utah Code Ann. (1953, as amended) § 78-27-56.

WHEREFORE, having fully answered the Complaint, the defendants request that said claims be dismissed and the relief prayed for be denied, and that the defendants be awarded their costs, attorneys fees and such other relief as the court may deem appropriate.

DATED this 4th day of June, 1990.

R. PAUL VAN DAM
Utah Attorney General

Denise Chancellor
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the Answer of the State of Utah, Mark S. Day, Fred Nelson and Kenneth L. Alkema was mailed, first class, postage prepaid, to William D. Peterson, c/o Paul E. Peterson, 1444 Murphy's Lane, Salt Lake City, Utah 84106.

DATED this 5th day of June, 1990.

Denise Chancellor

William D. Peterson
c/o Paul E. Peterson
1444 Murphy's Lane
Salt Lake City, Utah 84106
Telephone (801)485-9011, 278-3435

file: \legal\state\Int-req1

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

William D. Peterson - Plaintiff, -vs- The State of Utah Mark S. Day, Fred Nelson Kenneth L. Alkema Peter Van Alstein - Defendants	Plaintiff's First Request for Written Interrogatories Civil No. 900900523 Judge Leonard H. Russon

Plaintiff pursuant to Rule 33 of the Utah Rules of Civil Procedure, hereby submits the following Interrogatories to be answered by defendants, and each of them, under oath, within 20 days of the receipt of the same.

APPENDIX "A"

A. "Identify" all sources of your answers.

B. As used in these Interrogatories, the term "identify" as applied to a person (as defined) means to state his name, business and residence address, occupation, job title, and if not an individual, the type of entity and the address of its principal place of business, or government.

C. As used in these Interrogatories, the term "identify" as applied to a document means to state the type of document (letter,

memorandum, etc.), the identity of the author or originator, the date authored or originated, the identify of each person to whom the original or a copy was addressed or delivered, the identity of such person known or reasonably believed by you to have present possession, custody, or control thereof, and a brief description of the subject matter thereof.

D. As used in these Interrogatories, the term "identify" as applied to a communication means to state the date of the communication, the type of communication (telephone conversation, meeting, etc.), the place where the communication took place, the identity of the person who made the communication, the identity of each person who received the communication, and of each person present when it was made, and the subject matter discussed.

E. As used in these Interrogatories, the term "identify" as applied to a meeting means to state the date of the meeting, the place of the meeting, each person invited to attend, each person who attended, ad the subject matter discussed.

F. Omissions. The failure to state, identify or describe any fact, person, document or other item of information called by any of these interrogatories in your responses thereto shall be deemed a representation that such fact, person, document or other item of information as not known to you.

G. Witnesses and Relevant documents. For each answer to each interrogatory (1) identify each person known to you who has knowledge of the facts supporting your answer and (2) identify each

document containing information in support of your answer to each interrogatory.

H. Failure to make or cooperate in discovery. In answering to the plaintiff's complaints, the defendant repeatedly stated that he was without knowledge. This answer was given even in many instances where the defendant is the legal receiver, approver, and record keeper of said documents. Further failure to cooperate in providing answers, even in this and future discovery will be considered a failure to answer per Rule 37 (a) (3).

INTERROGATORIES

Answer, identify, and explain your answer to the following:

Records of the court of Judge Bruce Jenkins clearly show and Argee Admitted, even counterclaimed the problems for the way the equipment operated with the overly wet tailings material, the state of Utah also charged Peterson for not removing his equipment used, yet in answer to complaint 2. the defendant denied knowledge that Peterson furnished said equipment. Attorney John P. Sampson has been a long time friend and attorney for Robert Mouritsen and John McSweeney who are thieves of properties from Peterson. In conflict of interest, Mouritsen and McSweeney caused Sampson to be attorney for Peterson. Sampson exerted duress and fraud coercing Peterson to supposedly unlawfully settle the Argee matter before Judge Jenkins for payment for Peterson's RR car dumper. Settlement was illegal and payment to him for his work has never been made.

1. Why does not Peterson still retain legal ownership of the RR

car dumper at Clive in view of his work provided, and supposed settlement to him for his work?

2. How did the state of Utah get their claimed ownership of the RR-car dumper at Clive?

3. How long was Peterson's rail car dumper system used in moving the Vitro tailings?

4. When the plaintiff was not paid, he complained of not being paid for his work to the state's attorney Fred Nelson, the state's engineer Mark Day, and even directly to governor Norm Bangerter, by a letter, which prompted a reply. What knowledge do the above three have of the plaintiff's then complaints and what did they do and what did they inform the plaintiff were his recourses?

5. Part of plaintiff complaint above was informing the defendant that his bond was faulty. What changes were made in the bond documents after the plaintiff's complaint in July of 1985?

6. The payment bond document of 4th of Jan 1985 was referenced per (Title 14, Chapter 1, Sec. 5, U.C.A. 1953 as Amended) having paragraphs stating the following:

> NOW, THEREFORE, the condition of this obligation is such that **if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof**, then this obligation shall be void; otherwise to remain in full force and effect.
>
> PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of **Title 14, Chapter 1, Utah Code Annotated 1953, as amended**, and all liabilities on this bond to all such claimants shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

a) Bond documents dated 15th of August 1985 were added to the project manual nearly eight months after start of the contract referencing (Title 63, Chapter 56 U.C.A,m 1953 as Amended) instead of Title 14, Chapter 1 above.

b) In the payment bond document of 15th of August 1985 the following was replaced: **if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof**
the above was replaced with:
Principal shall pay all claimants supplying labor or materials to him or his subcontractors.

Is it true that the above changes were made?

7. What knowledge does the defendant have of changes to payment bond documents after initial contracting in January of 1985, and why were the changes made?

8. Does the plaintiff have entitlement per Title 14, Chapter 1, Utah Code Annotated 1953 as stated in the payment bond document dated the 4th of January 1985?

9. What entitlement to payment do the defendants bond documents indicate that the plaintiff have coming if he provided RR car dump equipment but was not paid as he claims.

10. What was the good and sufficient payment bond applicable to their project which the defendant had when they initially started contracted as they were required to have by law.

11. Why did not the disclaimer as indicated in 6 above make the payment obligations void as the paragraph states.

12. Why is the defendant not required to pay plaintiff's costs per Title 14, chapter 1, Sec. 7 or otherwise?

13. Why were the payment bond changes of August 15th 1985 made?

14. If Argee did indeed "faithfully perform the contract in accordance with the plans, specifications, and conditions thereof, then was their payment bond requirement indeed void as the signed agreement stated.

15. The Argee Corporation received around five million dollars from the State for increased costs in view that the tailings were not dryable as the basic contract indicated. What information was had by the State of Utah relative to the wetness or dryability of the tailings and which information was not given to Argee upon their initially obtaining the contract in January of 1985.

16. Was it true that the Argee Corporation found that the State did have wetness or dryability of the tailings information which the State failed to provide to Argee upon their contracting? Explain the basis for Argee being paid for additional costs to ship the material wetter that anticipated.

17. What knowledge does the defendant have that the plaintiff, the provider of equipment to move the tailings was informed of the additional requirement due to the additional wetness?

18. According to the same entitlement of Argee Corp, why should not the plaintiff be also entitled to his additional cost incurred due to information being withheld from him, which also incurred to him additional costs for which he was not paid?

19. Argee referenced laws and the plaintiff also referenced laws which give entitlement to him for the defendants failure to provide information which it had but withheld to the detriment of its

subcontractors. As Argee had entitlement per the referenced law, why does not the plaintiff also have entitlement per the referenced law?

20. The plaintiff has made claim in lawful courts of the State Utah. The defendant has made claim that this action is not in the proper court of jurisdiction. Would the defendant explain its basis of this claim, even its contention with its referenced contract laws Title 14 and Title 63 in which is quoted "court having jurisdiction in the county in which the contract was performed and executed per 14-1-7 and 14-1-15?

21. Title 14 and Title 63 law specifically express plaintiff's right for payment in the event he is not paid and in the event the payment bond is not proper. Why does the defendant have any sovereign immunity or any barring of this action in view of its usage of laws referenced which specifically give entitlement to the plaintiff? Explain any basis it has for immunity.

22. Explain all basis the plaintiff could be paid his costs according to defendant's requirements to insure that he is paid, including defendant's payment bond commitments as required by law or any other basis, as for any provider of work who is not paid.

23. Why should not the plaintiff be paid in view of ARTICLE V of the Constitution of the United States?

24. Give any reasons why the plaintiff should be not paid according ARTICLE V of the above and explain why reasons of not being paid are not un-constitutional?

23. Is the courts of the Office of Recovery Services a legitimate organization and have jurisdiction in the State of Utah?

24. Can the judges of the Office of Recovery Services hold hearings of complaint?

25. Can those called into attending hearings of complaints at the courts of the Office of Recovery make claims, or have a defense, and in defending, can defendants make statements, claims, counterclaims etc?

24. Wm Peterson founded Riverside Machine and Fabrication wrote and filed its articles of incorporation. Wm Peterson was and is its owner. By its board of directors, Riverside Machine and Fabrication was merged into Peterson Product Engineering & Manufacturing Company. These papers are on file at Utah's Divisions of Corporations. Approvals of the corporations filings are display director Peter Van Alstein's signature. What do the defendant's filings show? If there are any differences, what are they?

25. According to John P. Sampson, Robert Mouritsen, and John McSweeney, John P. Sampson was this plaintiff's attorney. The Board of Directors of Riverside Machine and Fabrications filed affidavits declaring conflictive interest of attorney Sampson where he has been representing both sides. Attorney Sampson has never resigned from representing Peterson and his company where in the court of Judge John Rokich, Peterson has requested that Sampson explain his activities and positions and that he resign from his

representation of Peterson and his company. Sampson has stated that he no longer represents Peterson but he has not explained when this representation discontinued. In the view of director Peter Van Alstein who has rights to determine for Riverside Machine and Fabrication, Wm Peterson who its owner and his founding board of directors, or interfering attorney John P. Sampson and his thieving colleagues Robert Mouritsen and John McSweeney?

26. By what basis of rules or law is defendant director Peter Van Alstein able to remove lawfully and properly filed documents of record which determine ownership and control of the business?

27. By what basis of rules or law is defendant director Peter Van Alstein able to remove the lawfully and properly filed document of merger of Peterson's business Riverside Machine and Fabrication?

28. Of a business owner, or his conflictive and thieving attorney, which, the owner or his counsel, have last rights in directing the matters of the owners business?

29. In the control of a business, without consent or knowledge of the existing board of directors, can outside parties elect themselves as the board of directors, make and issue company stock to themselves, then record themselves as being the lawful board of directors and owners of the business?

30. Is the policy of defendant director Peter Van Alstein to allow fraudulent thieving business takeovers by the method above and by the means the defendant director Van Alstein has been allowing to Mouritsen, McSweeney, and Sampson?

31. Instead of aiding one side or interfering with the other, would it not be better, even more legal, for the defendant's office of corporations to not take sides, not change filings, and allow conflicting parties to settle their differences in a court of law?

32. In the immediate matter, has not the defendant director Van Alstein taken sides with plaintiff's conflictive attorney making defendant additionally liable for plaintiff's losses? Defendant's position needs to be declared and justified by its law.

33. Copies of plaintiff's filings bearing the approving signature of their filings are included. Defendant Van Alstein's position needs to be declared and justified by its law as to plaintiff's rights and the current status of his filings.

Dated this 9th day of July 1990.

William D Peterson
William D. Peterson

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's First Request for Written Interrogatories was served,

to:

The State of Utah
Mark S. Day, Fred Nelson
Kenneth L. Alkema,
Peter Van Alstein

& 7-2-90 Report
4-20-89 merger
12-11-85 Articles

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this 9th day of July, 1990, by delivery to their attorney: the office of Utah Attorney General, Paul VanDam, State Capital Building, County of Salt Lake.

William D Peterson
William D. Peterson

R. PAUL VAN DAM, USB #3312
Attorney General
DENISE CHANCELLOR, USB #5452
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 538-1017

Attorneys for Defendants

Answers from Ken Alkema, Mark Day & Fred Nelson

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. PETERSON, Plaintiff,	:	DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
v.	:	Civil No. 900900523
THE STATE OF UTAH, MARK S. DAY, FRED NELSON, KENNETH L. ALKEMA PETER VAN ALSTYNE,	:	Judge L. H. RUSSON
Defendants.	:	

Defendants, the State of Utah, Mark S. Day, Fred Nelson and Kenneth L. Alkema hereby submits the following Responses and Objections to Plaintiff William D. Peterson's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendants object to the instructions contained in Plaintiff's First Set of Interrogatories on the grounds and to the extent that they request or purport to impose upon the defendants any obligation to respond in a manner or scope beyond the requirements set forth in Rules 26-37 of the Utah Rules of Civil Procedure. Plaintiff's instructions are vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendants object to Instruction B to the extent it requires disclosure of the home address of employees or former employees of the State.

3. Defendants object to plaintiff's inflammatory introductory statement setting forth purported facts, for the most part unrelated to the defendants. The defendants have no information or belief as to the truth of the matters asserted and to the extent that an admission is requested, the same is denied. This introductory language is argumentative, not in accord with discovery rules or practice and is an abuse of the discovery process.

4. Defendants object that plaintiff has failed to sequentially number his interrogatories. Where there are duplicate-numbered interrogatories, defendants will refer to the interrogatory by number as well as the page number where the interrogatory appears in plaintiff's document.

INTERROGATORIES

Interrogatory No. 1: Why does not Peterson still retain legal ownership of the RR car dumper at Clive in view of his work provided, and supposed settlement to him for his work?

Response to Interrogatory No. 1: Defendants object to this interrogatory on the grounds that it is not within the scope of discovery under Rule 26 Utah R. Civ. P., is not reasonably calculated to lead to the discovery of admissible evidence and, furthermore, calls for a conclusion of law.

Interrogatory No. 2: How did the state of Utah get their claimed ownership of the RR-car dumper at Clive?

Response to Interrogatory No. 2: The State of Utah responds that it acquired the railroad car dumper under a settlement agreement with Argee Corporation.

Interrogatory No. 3: How long was Peterson's rail car dumper system used in moving the Vitro tailings?

Response to Interrogatory No. 3: Defendants have no information or belief that the railroad dumper system was owned by Mr. Peterson. With the foregoing limitation, defendants respond that the railroad dumper system that the State contracted with Argee Corporation to operate was in place at Clive from approximately June 1985 until March 1987.

Interrogatory No. 4: When the plaintiff was not paid, he complained of not being paid for his work to the state's attorney Fred Nelson, the state's engineer Mark Day, and even directly to governor Norm Bangerter, by a letter, which prompted a reply. What knowledge do the above three have of the plaintiff's then complaints and what did they do and what did they inform the plaintiff were his recourses?

Response to Interrogatory No. 4: Defendants object to this interrogatory on the grounds that it is vague and overbroad. Defendants also object to the phrase "[w]hen the plaintiff was not paid" on the grounds that plaintiff fails to state with particularity who had purportedly failed to pay him. Without waiving these objections, defendants respond as follows:

(a) Fred Nelson recalls a conversation with Mr. Peterson whereby Mr. Nelson told Mr. Peterson that he did not have a contractual relationship with the State and that his recourse was against the contractor, Argee Corporation.

(b) Mark Day responds that he told Mr. Peterson that the State had a valid payment bond and that his business was not with the State but with the contractor, Argee, and/or the bonding company.

(c) The Governor's Office has a letter on file from Mr. Peterson dated December 29, 1987 and a response thereto dated January 19, 1988. If there has been any correspondence earlier than the foregoing date it has been archived and access thereto would be unreasonably burdensome. If Mr. Peterson has corresponded with or had correspondence from the Governor's Office prior to December 1987, he may more easily obtain copies of this correspondence from his files.

Interrogatory No. 5: Part of plaintiff(sic) complaint above was informing the defendant that his bond was faulty. What changes were made in the bond documents after the plaintiff's complaint in July of 1985?

Response to Interrogatory No. 5: Defendants object to the assertion in plaintiff's interrogatory that the State changed its bond documents as a result of plaintiff's purported July 1985 complaint. The State responds that any changes to the bond documents are reflected in the documents on file with the Utah Department of Health, where they are available for inspection and copying.

Interrogatory No. 6: The payment bond document of 4th of Jan 1985 was referenced per (Title 14, Chapter 1, Sec. 5, U.C.A. 1953 as Amended) having paragraphs stating the following:

> NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof, then this obligation shall be void; otherwise to remain in full force and effect.
>
> PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 14, Chapter 1, Utah Code Annotated 1953, as amended, and all liabilities on this bond to all such claimants shall be determined in accordance with said provisions to the same extent as if it were copied at length herein.

(a) Bond documents dated 15th of August 1985 were added to the project manual nearly eight months after start of the contract referencing (Title 63, Chapter 56 U.C.A. 1953 as amended) instead of Title 14, Chapter 1 above.

(b) In payment bond document of 15th of August 1985 the following was replaced: if the said Principal shall faithfully perform the contract in accordance with the plans, specifications, and conditions thereof
the above was replaced with:
Principal shall pay all claimants supplying labor or materials to him of his subcontractors.

Is it true that the above changes were made?

Response to Interrogatory No. 6. Plaintiff is referred to the bond documents on file with the Utah Department of Health where they are available for inspection and copying .

Interrogatory No. 7: What knowledge does the defendant have of changes to payment bond documents after initial contracting in January of 1985, and why were the changes made?

Response to Interrogatory No. 7: Defendants refer the plaintiff to defendant's response to Interrogatory No. 5. In addition, the State responds that some changes to the bond documents were made to correct clerical errors.

Interrogatory No. 8: Does the plaintiff have entitlement per Title 14, Chapter 1, Utah Code Annotated 1953 as stated in the payment bond document dated the 4th of January 1985?

Response to Interrogatory No. 8: Defendants object to this interrogatory on the grounds that it is not within the scope of the rules of discovery and, furthermore, calls for a legal conclusion.

Interrogatory No. 9: What entitlement to payment does the defendants(sic) bond documents indicate that the plaintiff have coming if he provided RR car dump equipment but was not paid as he claims.

Response to Interrogatory No. 9: Defendants object to Interrogatory No. 9 on the grounds that the question is speculative, calls for a hypothetical response, and is not within the scope of the rules of discovery. Defendants refer plaintiff to their objection in response to Interrogatory No. 3.

Interrogatory No. 10: What was the good and sufficient payment bond applicable to their project which the defendant had when they initially started contracted(sic) as they were required to have by law.

Response to Interrogatory No. 10: Plaintiff is referred to the documents on file with the Utah Department of Health, which are available for inspection and copying.

Interrogatory No. 11: Why did not the disclaimer as indicated in 6 above make the payment obligations void as the paragraph states.

Response to Interrogatory No. 11: Defendants object to this interrogatory on the grounds that it is not within the scope of the rules of discovery and, furthermore, asks defendants to render a legal opinion to the plaintiff.

Interrogatory No. 12: Why is the defendant not required to pay plaintiff's costs per Title 14, chapter 1, Sec. 7 or otherwise?

Response to Interrogatory No. 12: Defendants object to this interrogatory on the grounds that it is duplicative, is not within the scope of discovery and, furthermore, calls for a legal conclusion.

Interrogatory No. 13: Why were the payment bond changes of August 15th 1985 made?

Response to Interrogatory No. 13: This interrogatory is duplicative of Interrogatory No. 7. Accordingly, defendants refer plaintiff to their response to Interrogatory No. 7.

Interrogatory No. 14: If Argee did indeed "faithfully perform the contract in accordance with the plans, specifications, and conditions thereof, then was their payment bond requirement indeed void as the signed agreement stated.

Response to Interrogatory No. 14: Defendants object to this interrogatory on the grounds that it is not within the scope of discovery, is vague, overbroad, speculative and calls for a hypothetical response. In addition, plaintiff requests defendants to render a legal opinion.

Interrogatory No. 15: The Argee Corporation received around five million dollars from the State for increased costs in

view that the tailings were not dryable as the basic contract indicated. What information was had by the State of Utah relative to the wetness or dryability of the tailings and which information was not given to Argee upon their initially obtaining the contract in January 1985.

Response to Interrogatory No. 15: Defendants object to plaintiff's premise, contained in the first sentence of this interrogatory, that Argee Corporation was paid moneys, in addition to the contract price, because of the moisture content of the tailings. Defendants also object to plaintiff's assertion that Argee was not given information as to the moisture content of the tailings when it obtained the contract. Without waiving the foregoing objections, defendants respond that any information that the defendants had with respect to the moisture content of the tailings was contained in the bid documents and in the files at the Health Department, which are available for inspection.

Interrogatory No. 16: Was it true that the Argee Corporation found that the State did have wetness or dryability of tailings information which the State failed to provide to Argee upon their contracting? Explain the basis for Argee being paid for additional costs to ship the material wetter than anticipated.

Response to Interrogatory No. 16: Defendants repeat their response to Interrogatory No. 15 and objections contained therein. In addition, defendants respond that one of the conditions of the bid for the Vitro project was that each bidder was required to make an independent verification of site

conditions and that bid information distributed by the Health Department was no substitute for such independent verification. Defendants respond to the last sentence of plaintiff's interrogatory that Argee Corporation was paid funds in addition to the contract price to settle an arbitration dispute.

Interrogatory No. 17: What knowledge does the defendant have that the plaintiff, the provider of equipment to move the tailings[,] was informed of the additional requirement due to the additional wetness?

Response to Interrogatory No. 17: Defendants object to Interrogatory No. 17 on the following grounds:

(a) The defendants object to the statement "the plaintiff [was] the provider of equipment to move the tailings" in Interrogatory No. 17 as overbroad and ambiguous. Defendants reiterate their objection contained in response to Interrogatory No. 3.

(b) Defendants also object to the statement "was informed of the additional requirement due to the additional wetness" as vague and overbroad and does not state with reasonable particularity a question which defendants can reasonably answer.

Without having waived the above objections, defendants, to the best of their information and belief, do not know what plaintiff was informed of as to the moisture content of the tailings.

Interrogatory No. 18: According to the same entitlement of Argee Corp, why should not the plaintiff be also

entitled to his additional cost incurred due to information being withheld from him, which also incurred to him additional costs for which he was not paid?

Response to Interrogatory No. 18: Defendants object to this interrogatory on the grounds that it is not within the scope of discovery under Rule 26 Utah R. Civ. P., is not reasonably calculated to lead to the discovery of admissible evidence and, furthermore, calls for a conclusion of law.

Interrogatory No. 19: Argee referenced laws and the plaintiff also referenced laws which give entitlement to him for the defendants failure to provide information which had but withheld to the detriment of its subcontractors. As Argee had entitlement per the referenced law, why does not plaintiff also have entitlement per the referenced law?

Response to Interrogatory No. 19: Defendants object to this interrogatory as duplicative, vague, ambiguous, not within the scope of the rules of discovery and, furthermore, calls for a legal conclusion.

Interrogatory No. 20: The plaintiff has made claim in lawful courts of the State Utah. The defendant has made claim that this action is not in the proper court of jurisdiction. Would the defendant explain its basis of this claim, even its contention with its referenced contract laws Title 14 and Title 63 in which is quoted "court having jurisdiction in the county in which the contract was performed and executed per 14-1-7 and 14-1-15?

Response to Interrogatory No. 20: Defendants object to this interrogatory on the grounds that it vague and ambiguous, is not within the scope of the rules of discovery and, furthermore, calls for the defendants to give legal advice to the plaintiff.

Interrogatory No. 21: Title 14 and Title 63 law specifically express plaintiff's right for payment in the event he is not paid and in the event the payment bond is not proper. Why does the defendant have any sovereign immunity or any barring of this action in view of its usage of laws referenced which specifically give entitlement to this plaintiff? Explain any basis it has for immunity.

Response to Interrogatory No. 21: Defendants object to this interrogatory on the grounds that it is ambiguous, vague, overbroad, not within the scope of discovery, and, furthermore, calls for a conclusion of law.

Interrogatory No. 22: Explain all basis the plaintiff could be paid his costs according to defendant's requirements to insure that he is paid, including defendant's payment bond commitments as required by law or any other basis, as for any provider of work who is not paid.

Response to Interrogatory No. 22: Defendants object to this interrogatory as ambiguous, overbroad, burdensome, and not within the scope of the rules of discovery. Furthermore, this interrogatory requests defendants to render legal advice to the plaintiff.

Interrogatory No. 23 [p.7]: Why should not the plaintiff be paid in view of ARTICLE V of the Constitution of the United States?

Response to Interrogatory No. 23 [p.7]: Defendants object to this interrogatory as overbroad, not within the bounds of discovery, and, furthermore, calls for a conclusion of law.

Interrogatory No. 24 [p.7]: Give any reasons why the plaintiff should be not paid according ARTICLE V of the above and explain why reasons of not being paid are not un-constitutional?

Response to Interrogatory No. 24 [p.7]: Defendants object to this interrogatory on the grounds that it is overbroad, not within the scope of discovery, and, furthermore, calls for a legal conclusion.

Interrogatory No. 23 [p.8]: Is the courts(sic) of the Office of Recovery Services a legitimate organization and have jurisdiction in the State of Utah?

Response to Interrogatory No 23 [p.8]: Plaintiff is referred to Utah Code Annotated Title 62A, Chapter 11, for the statutory authority of the Office of Recovery Services.

Interrogatory No. 24 [p.8]: Can the judges of the Office of Recovery Services hold hearings of complaint?

Response to Interrogatory No. 24 [p.8]: Plaintiff is referred to defendants response to Interrogatory No. 23 [p.8].

Interrogatory No. 25 [p.8]: Can those called into attending hearings of complaints at the court of the Office of Recovery(sic) make claims, or have a defense, and in defending, can defendants make statements, claims, counterclaims etc?

Response to Interrogatory No. 25 [p.8]: Plaintiff is referred to defendants response to Interrogatory No. 23 [p.8].

Interrogatories No. 24-33 [pp.8-10] and response thereto: These interrogatories are addressed to defendant Peter VanAlstyne and will be answered under separate response by him. The other defendants have no information or belief as to the matters asserted in Interrogatories No. 24-33 [pp.8-10] and to the extent that these interrogatories call for an admission the same are denied.

DATED this 30th day of July, 1990.

Respectfully submitted,

STATE OF UTAH

By Kenneth L. Alkema

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KENNETH L. ALKEMA

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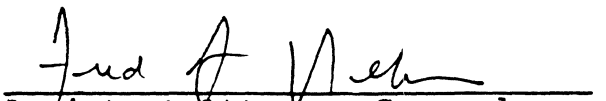
FRED NELSON



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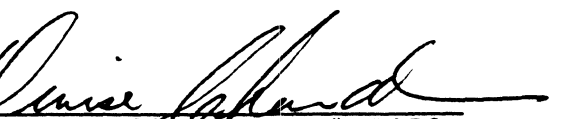
ATTORNEY GENERAL FOR THE STATE OF UTAH

By 

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ORMAN H. BANGERTER
GOVERNOR

STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114

January 19, 1988

William D. Peterson
c/o Paul E. Peterson
2219 Panorama Way
Salt Lake City, Utah 84117

Dear Mr. Peterson:

My staff at the Utah Department of Health has been informed of the concerns described in your letter of December 29, 1987. The health department personnel indicated to me that they have discussed this problem numerous times with you and have exhausted all avenues of remedy as far as any State obligation.

The Department of Health has cooperated with you by supplying all requested documents for your review. If you would like further information from the State's records, we will continue to offer the files for your review. Please make an appointment with Mr. Mark S. Day at 538-6734.

Sincerely,

Norman H. Bangerter
Governor

NHB/MSD/bw

William D. Peterson
c/o Paul E. Peterson
2219 Panorama Way
Salt Lake City, Utah 84117

December 29, 1987

Gov. Norman H Bangerter
State of Utah
Utah State Capitol
Salt Lake City, Utah

Subject: Vitro Tailing
Argee Doesn't Pay
Ref: Bond No. 944226, Seaboard No. 4035
Authority No. 752102

Dear Governor Bangerter:

I as an Engineer provided the technology for dumping the RR cars at Clive Ut. My company Pemco built and provided the dump facility which enabled the project to be finished a year early. There was some $200,000 + owing to Pemco for this work. Pemco has received nothing. I have received nothing. As a result of not being paid, I have lost all my business assets,

> PEMCO "Product Engineering & Manufacturing Co. was a twelve year old business, employing up to 65 employees, doing work world wide, specializing in material handling systems, local projects including the thirteen mile conveyor to Antelope Island, and the Conveyors for the Chevron Shale research Project.

Since Argee, for you, took and used my operating capital, my business has failed to provide for me, my Wife, and our 6 children; thus, in addition to loosing my business ($3,725,000), I have lost my Wife, Six Children, and Home.

When I worked on the Vitro project, Utah had contracted with Argee on the old bond law of (Title 14, Chapter 1, Sec. 4, UCA 1953, as Amended). I understand that under the old law I have rights to request and be paid for my costs of doing work for your benefit, the State of Utah. I am hoping that I do have some rights and I am thus making a request for enumeration and am thus soliciting for your help.

Sincerely yours,

William D Peterson

William D. Peterson, M.S., P.E.
also, President - Pemco

2-Hill 272-2435

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Answers from Peter Van Alstyne

IN THE THIRD JUDICIAL DISTRICT COURT,

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM D. PETERSON, Plaintiff, vs. THE STATE OF UTAH , MARK S. DAY, FRED NELSON, KENNETH L. ALKEMA AND PETER VAN ALSTYNE, Defendants.	DEFENDANT'S ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES Civil No 900900523 Judge L. H. Russon

Defendant, the State of Utah, Department of Corporations, Peter Van Alstyne, by and through counsel, Assistant Attorney General, Melissa M. Hubbell, hereby submits the following Answers to Plaintiff's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Defendant objects to the instructions contained in Plaintiff's First Set of Interrogatories on the grounds and to the extent that they request or purport to impose upon the defendants

any obligation to respond in a manner or scope beyond the requirements set forth in Rules 26-37 of the Utah Rules of Civil Procedure. Plaintiff's instructions are vague, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

2. Defendant objects to Instruction B to the extent it requires disclosure of the home address of employees or former employees of the State.

3. Defendant objects to plaintiff's inflammatory introductory statement setting forth purported facts, for the most part unrelated to the defendants. The defendant has no information or belief as to the truth of the matters asserted and to the extent that an admission is requested, the same is denied. This introductory language is argumentative, not in accord with discovery rules or practice and is an abuse of the discovery process.

4. Defendant objects that plaintiff has failed to sequentially number his interrogatories. Where there are duplicate-numbered interrogatories, defendants will refer to the interrogatory by number as well as the page number where the interrogatory appears in plaintiff's document.

INTERROGATORIES

Interrogatories Nos. 1-23 pages 3-7 and response thereto:

These interrogatories are addressed to Defendants Mark S. Day, Fred Nelson, and Kenneth L. Alkema and will be answered under separate response by them. Peter Van Alstyne has no information or belief as to the matters asserted in Interrogatories 1-23 pages 3-8 and to the extent that these interrogatories call for an admission, the same are denied.

Interrogatory No. 24:

Wm Peterson founded Riverside Machine and Fabrication (sic) wrote and filed its article of incorporation. Wm Peterson was and is its owner. By its board of directors, Riverside Machine and Fabrication was merged into Peterson Product Engineering & Manufacturing Company. These papers are in file at Utah's Division of Corporations. Approval of the corporations filings are display (sic) director Peter Van Alstyne's signature. What do the defendant's filings show? If there are any differences, what are they?

Answer:

Defendant objects to this interrogatory on the basis that it is vague, overbroad and calls for a legal conclusion. Without waiving said objection, Defendant responds that these documents are

a matter of public record and available to the Plaintiff. Certified copies of these documents are attached.

Interrogatory No. 25:

According to John P. Sampson, Robert Mouritsen, and John McSweeney, John P. Sampson was this plaintiff's attorney. The Board of Directors of Riverside Machine and Fabrications filed affidavits declaring conflictive interest of attorney Sampson where he has been representing both sides. Attorney Sampson has never resigned from representing Peterson and his company where in the court of Judge John Rokich, Peterson has requested that Sampson explain his activities and positions and that he resign from his representation of Peterson and his company. Sampson has stated that he no longer represents Peterson but he has not explained when this representation discontinued. In the view of director Peter Van Alstyne who has rights to determine for Riverside Machine and Fabrication, Wm Peterson who its owner (sic) and his founding board of directors, or interfering attorney John P. Sampson and his thieving colleagues Robert Mouritsen and John McSweeney?

Answer:

The Defendant objects to this interrogatory on the grounds that it is not within the scope of discovery under Rule 26, Utah Rules of Civil Procedure, is not reasonable calculated to lead to the discovery of admissible evidence. Furthermore, calls for

speculation on the part of the defendant. In addition, the question is vague, overbroad and calls for a hypothetical response.

Interrogatory No. 26:

By what basis of rules or law is defendant director Peter Van Alstyne able to remove lawfully and properly filed documents of record which determine ownership and control of the business?

Answer:

The Business Corporation Act, Utah Code Annotated Section 16-10-132 gives Peter Van Alstyne, as director of the Division of Corporations, the power and authority reasonably necessary to enable him to administer the Business Corporation Act sufficiently and to perform the duties therein imposed upon him.

Interrogatory No. 27:

By what basis of rules or law is defendant director Peter Van Alstyne able to remove the lawfully and properly filed document of merger of Peterson's business Riverside Machine and Fabrication?

Answer:

See answer to Interrogatory Number 26.

Interrogatory No. 28:

Of a business owner, or his conflictive and thieving attorney, which, the owner or his counsel, have last rights in directing the matters of the owners business?

Answer:

Defendant objects to this interrogatory that it is not within the scope of discovery, is vague, overbroad, speculative and calls for a hypothetical response. Additionally, plaintiff requests the defendant to render a legal opinion.

Interrogatory No. 29:

In the control of a business, without consent or knowledge of the existing board of directors, can outside parties elect themselves as the board of directors, make and issue company stock to themselves, then record themselves as being the lawful board of directors and owners of the business?

Answer:

Defendant objects to this interrogatory on the basis that it is vague, speculative and calls for a legal conclusion. Without waiving said objection defendant states that such action would appear to be a violation of statute.

Interrogatory No. 30:

Is the policy of defendant director Peter Van Alstyne to allow fraudulent thieving business takeovers by the method above and by the means the defendant director Peter Van Alstyne has been allowing to Mouritsen, McSweeney, and Sampson? (sic)

Answer:

Defendant objects to Interrogatory 30 on the basis of Plaintiff's scurrilous and argumentative statements. Defendant further objects to this interrogatory on the grounds that it is speculative calls for a hypothetical response, and is vague and overbroad.

Interrogatory No. 31:

Instead of aiding one side or interfering with the other, would it not be better, even more legal, for the defendant's office of corporations to not take sides, not change filings, and allow conflicting parties to settle their differences in a court of law?

Answer:

Defendant objects to this Interrogatory 31 on the grounds that the question is speculative, calls for a hypothetical response, is not within the scope of the Rules of Discovery and furthermore calls for a legal conclusion.

Interrogatory No. 32:

In the immediate matter, has not the defendant director Van Alstyne taken sides with plaintiff's conflictive attorney making defendant additionally liable for plaintiff's losses? Defendant's position needs to be declared and justified by its law.

Answer:

Defendant objects to the assertion in Plaintiff's interrogatory that the State has taken sides in any conflict between Plaintiff and his attorney. Defendant further objects on the basis that this questions is vague, speculative and calls for a legal conclusion.

Interrogatory No. 33:

Copies of plaintiff's filings bearing the approving signature of their filings are included. Defendant Van Alstyne's position needs to be declared and justified by its law as to plaintiff's rights and the current status of his filings.

Answer:

Interrogatory 33 does not appear to be a question. Defendant objects to this interrogatory on the grounds that it is not within the scope of discovery under Rule 26 Utah Rules of Civil Procedure, is not reasonably calculated to lead to the discovery of admissible evidence and calls for a legal conclusion.

DATED this 10 day of August, 1990.

Attorney General

R. Paul Van Dam

BY: _____

Melissa M. Hubbell
Assistant Attorney General
Attorney for Defendant
Peter Van Alstyne

Respectfully submitted,

STATE OF UTAH

_____

Peter Van Alstyne
Director
Division of Corporations